

No. 10499

*FILED IN ONE
OF CLERK.*

United States
Circuit Court of Appeals

For the Ninth Circuit. 13

UNITED STATES OF AMERICA,
Appellant,
vs.

SANTA INEZ COMPANY, a Corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

SEP 22 1943

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court for the Northern
District of California, Southern Division

No. 21785-L

SANTA INEZ COMPANY, a corporation,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

COMPLAINT FOR RECOVERY OF TAXES

Comes now plaintiff above named, and for cause of action against the above named defendant, complains and alleges:

I.

This action is brought to recover Federal corporate income and excess-profits taxes erroneously and illegally assessed and collected. The amount claimed in this action exceeds \$10,000.00. Said taxes were collected by John V. Lewis, former Collector of Internal Revenue for the First District of California, and said John V. Lewis is not now in office as Collector of Internal Revenue. Jurisdiction of this Court is based upon [1*] the provisions of Section 24, subdivision 20 of the Judicial Code as amended; Title 28, U. S. Code Section 41, subdivision 20.

II.

At all times herein mentioned plaintiff was and now is a corporation duly organized and existing

*Page numbering appearing at foot of page of original certified Transcript of Record.

under and by virtue of the laws of the State of California.

III.

At all times herein mentioned plaintiff has kept its books of account and filed his tax returns upon the cash receipts and disbursements basis and upon the basis of a calendar year.

IV.

On May 1, 1933, Sacramento Medico Dental Building, Inc. (hereinafter sometimes referred to for convenience as "old corporation") was the owner of certain real property in Sacramento, California, with an office building situated thereon, together with certain furniture, furnishings and equipment in said building.

V.

On or about May 1, 1927, said old corporation created an original issue of \$450,000.00 principal amount of first mortgage bonds and contemporaneously therewith as security for the payment of said bonds, executed a trust indenture in favor of Edwin L. Bowes as trustee, under which said real property and office building, together with all furniture, furnishings and equipment owned by said old corporation and used by it in the operation of said building, were conveyed to said trustee to secure the payment of said bonds. Subsequent to the execution of said trust indenture, Leigh M. Battson was [2] substituted as trustee in lieu of Edwin L. Bowes.

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VI.

2-49 On May 1, 1933 there were issued and outstanding bonds of the aforementioned issue of the aggregate principal amount of \$416,500.00, of which bonds in the principal amount of \$16,500.00 were owned by stockholders of the old corporation. On said date said old corporation defaulted in the payment of interest on said bonds, and in the payment of the principal amount of such of said bonds as matured on May 1, 1933, which defaults were never cured. On said date a Bondholders' Committee was formed for the purpose of safeguarding the interests of all of the holders of said bonds. Pursuant to a deposit agreement entered into between said Committee and the holders of said bonds, bonds were deposited with said Committee by the holders thereof and said Committee issued to said depositing bondholders certificates of deposit evidencing the deposit of said bonds.

VII.

On March 6, 1934, a written plan of reorganization of the old corporation was entered into between the Bondholders' Committee, the old corporation and plaintiff, as the largest owner of outstanding bonds of the old corporation. Subsequently said plan of reorganization was amended in certain minor particulars.

VIII.

In pursuance of said plan of reorganization as amended, the following proceedings were taken:

(a) On October 3, 1934, at the request of the Committee, the trustee under the trust indenture

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securing the bonds of the old corporation caused the property subject [3] thereto to be sold at public auction. At said sale said property was purchased by the Committee for the benefit of depositing bondholders for a sum less than the face amount of said outstanding bonds. At the date of said sale an aggregate of \$361,700.00 principal amount of said bonds were on deposit with the Committee. Said bonds on deposit with the Committee represented approximately ninety per cent of the then issued and outstanding bonds, exclusive of \$16,500.00 principal amount of bonds which were owned by stockholders of the old corporation and which, pursuant to the plan of reorganization, were cancelled as hereinafter set forth. The purchase price of the property acquired by the Committee at said trustee's sale was paid in manner following: By applying toward the payment of the purchase price the distributive share of the net proceeds of sale inuring to the \$361,700.00 principal amount of bonds held by the Committee and by paying to the trustee in cash the distributive share of the net proceeds of sale inuring to the non-depositing bondholders.

(b) On November 8, 1934, Sacramento Medico Dental Building Company, (hereinafter sometimes referred to for convenience as "new corporation") was incorporated under the laws of the State of California by the Committee.

(c) On November 23, 1934, the Committee transferred to the new corporation the property acquired at said trustee's sale. In exchange therefor,

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said new corporation delivered to the Committee for the ratable benefit of the depositing bondholders of the old corporation \$361,700.00 principal amount of bonds of the new corporation and voting trust certificates for 3,617 shares of its capital stock, all of which stock was of a single class. Said 3,617 shares represented 45% of the issued [4] stock of the new corporation.

(d) Voting trust certificates for 4,420 shares of the capital stock of the new corporation were issued by the new corporation to stockholders of the old corporation. Said 4,420 shares represented 55% of the issued stock of the new corporation. The consideration for the issuance of said voting trust certificates to stockholders of the old corporation was the surrender by said stockholders for cancellation of the \$15,500.00 principal amount of bonds of the old corporation owned by such stockholders and the payment to the Committee by the old corporation, for expenses of reorganization, of the sum of \$33,779.92, which money was not subject to the lien of the trust indenture securing the bonds of the old corporation. The voting trust certificates issued to the stockholders of the old corporation were deposited in escrow as security for the full performance of the covenants of the trust indenture securing the bonds issued by the new corporation; under the terms of the escrow deposit, said voting trust certificates were to remain in escrow as long as any such bonds were outstanding and unpaid and if any default should exist under the trust indenture for thirty days, then the

stock of the new corporation represented by such voting trust certificates was to be cancelled by the escrow agent.

IX.

Continuously from May 1, 1933 to and including the date of the trustee's sale on October 3, 1934, the value of all of the property owned by the old corporation was substantially less than the principal amount of its outstanding bonds.

X.

On October 30, 1934, plaintiff was the owner of [5] certificates of deposit covering \$85,600.00 principal amount of bonds of the old corporation which plaintiff had theretofore acquired by purchase for the sum of \$36,644.42. Said certificates of deposit represented \$85,600.00 principal amount of said bonds which had theretofore been deposited with the Committee under and pursuant to the deposit agreement hereinabove referred to. On August 6, 1935 plaintiff exchanged said certificates of deposit, representing \$85,600.00 principal amount of bonds of the old corporation, for \$85,600.00 principal amount of bonds of the new corporation and voting trust certificates for 856 shares of stock of the new corporation. Said exchange was made pursuant to the plan of reorganization as amended and the proceedings hereinabove set forth.

XI.

The exchange by plaintiff on August 6, 1935 of its certificates of deposit covering \$85,600.00

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principal amount of bonds of the old corporation for \$85,600.00 principal amount of bonds of the new corporation and voting trust certificates for 856 shares of stock of the new corporation gave rise to neither gain nor loss and the said exchange constituted a tax-free exchange either under the provisions of Section 112 (b) (3) or 112 (b) (5) of the Revenue Act of 1934.

XII.

On April 15, 1933 Whitney Estate Company was the owner of certain real estate in San Francisco, California, with an office building situated thereon.

XIII.

On or about April 15, 1928 Whitney Estate Company created an original issue of \$1,200,000.00 principal amount of first mortgage bonds and contemporaneously therewith, as [6] security for the payment of said bonds, executed a mortgage in favor of American Trust Company as trustee under which said real estate and office building were mortgaged to said trustee to secure the payment of said bonds.

XIV.

On April 15, 1933 there were issued and outstanding bonds of the aforementioned issue of the aggregate principal amount of \$1,175,000.00. On said date Whitney Estate Company defaulted in the payment of interest on said bonds and in the payment of the principal amount of such of said bonds as matured on April 15, 1933, which defaults

were never cured. On or about June 1, 1933 a Bondholders' Protective Committee was formed for the purpose of safeguarding the interests of all of the holders of said bonds. Pursuant to a deposit agreement entered into between said Committee and holders of said bonds, bonds were deposited with said Committee by the holders thereof and said Committee issued to said depositing bondholders certificates of deposit evidencing the deposit of said bonds.

XV.

On February 28, 1934, pursuant to a request therefor made upon it by said Committee, the American Trust Company, as trustee under the mortgage securing said bonds, caused the aforementioned real estate and office building which were subject to said mortgage, to be sold at public auction. At said sale said real estate and building were purchased by said Committee for the benefit of the depositing bondholders for a sum less than the face amount of said outstanding bonds. At the date of said sale an aggregate of \$1,115,000.00 principal amount of said bonds, representing approximately 95% of the then issued and outstanding bonds were on deposit with said [7] Committee. The purchase price of the real estate and building purchased at said Trustee's sale was paid in manner following: By applying toward the payment of the purchase price the distributive share of the net proceeds of sale inuring to the \$1,115,000.00 principal amount of bonds held by the Committee and by paying to the Trustee in cash the distributive

share of the net proceeds of sale inuring to the non-depositing bondholders.

XVI.

Continuously from April 15, 1933 to and including the date of the Trustee's sale on February 28, 1934, the value of all of the property owned by Whitney Estate Company was substantially less than the principal amount of its outstanding bonds.

XVII.

Commencing in the month of January, 1934 the Bondholders' Protective Committee engaged in formulating a specific plan of reorganization under which a new corporation would be formed to acquire, hold and operate the real estate and building hereinabove referred to for the benefit of depositing bondholders. Said plan of reorganization was consummated on or about December 1, 1934. Pursuant to said plan of reorganization, the real estate and building which said Committee acquired at said Trustee's sale was transferred to a new corporation known as "One Thirty-Three Geary Corporation" and in exchange therefor, the new corporation delivered to said Committee for the ratable benefit of the depositing bondholders of Whitney Estate Company 11,150 shares of the no par capital stock of One Thirty-Three Geary Corporation, being all of its issued capital stock and constituting the sole consideration for the transfer of said real [8] estate and building to One Thirty-Three Geary Corporation.

XVIII.

On February 28, 1934, plaintiff was the owner of certificates of deposit covering \$136,000.00 principal amount of bonds of the Whitney Estate Company which plaintiff had theretofore acquired by purchase for the sum of \$59,421.25. Said certificates of deposit represented \$136,000.00 principal amount of said bonds which had theretofore been deposited with said Committee under and pursuant to the deposit agreement hereinabove referred to. On December 10, 1934 plaintiff exchanged said certificates of deposit representing \$136,000.00 principal amount of Whitney Estate Company solely for 1,360 shares of no par value capital stock of One Thirty-Three Geary Corporation. Said exchange was made pursuant to said plan of reorganization and the proceedings hereinabove referred to.

XIX.

The exchange by plaintiff on December 10, 1934 of its certificates of deposit covering \$136,000.00 principal amount of bonds of Whitney Estate Company solely for 1,360 shares of no par value capital stock of One Thirty-Three Geary Corporation gave rise to neither gain nor loss and said exchange constituted a tax-free exchange either under the provisions of Section 112 (b) (3) or 112 (b) (5) of the Revenue Act of 1934.

XX.

In the original federal corporation income and excess-profits tax return filed by plaintiff for the

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calendar year 1934, plaintiff did not report nor include any gain as a result of the exchange by plaintiff of the certificates of deposit covering \$85,600.00 principal amount of bonds of Sacramento Medico Dental Building, Inc., for \$85,600.00 principal [9] amount of bonds and 856 shares of stock (represented by voting trust certificates) of Sacramento Medico Dental Building Company, nor did plaintiff report nor include any gain as a result of the exchange by plaintiff of the certificates of deposit covering \$136,000.00 principal amount of bonds of Whitney Estate Company for 1,360 shares of stock of One Thirty-Three Geary Corporation. The net income reported in said original return was the sum of \$7,169.06 and the amount of income tax shown to be due by said original return was the sum of \$985.75, which sum was paid by plaintiff in the year 1935.

XXI.

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On December 28, 1935 plaintiff filed with John V. Lewis, then Collector of Internal Revenue for the First District of California, an amended federal corporation income and excess-profits tax return for the calendar year 1934. In said amended return, plaintiff erroneously reported and included as gross income the sum of \$27,555.58 as capital gain resulting from the disposition by plaintiff of the certificates of deposit covering \$85,600.00 principal amount of bonds of Sacramento Medico Dental Building, Inc.; such capital gain was determined by subtracting the sum of \$36,644.42 (representing the cost of said bonds to plaintiff) from the sum

of \$64,200.00 (representing plaintiff's pro rata shares of the fair market value, as of the date of the Trustee's sale, of the property which was subject to the trust indenture securing the bonds of Sacramento Medico Dental Building, Inc., and which was purchased by the Committee for the benefit of the depositing bondholders). In said amended return plaintiff further erroneously reported and included as gross income the sum of \$44,907.70 as capital gain resulting from the disposition by plaintiff of the certificates of deposit covering \$136,000.00 [10] principal amount of bonds of Whitney Estate Company; such capital gain was determined by subtracting the sum of \$59,421.25 (representing the cost of said bonds to plaintiff) from the sum of \$104,328.95 (representing plaintiff's pro rata share of the fair market value, as of the date of the Trustee's sale, of the property which was subject to the mortgage securing the bonds of Whitney Estate Company and which was purchased by the Committee for the benefit of the depositing bondholders).

XXII.

On December 28, 1935 plaintiff paid to John V. Lewis, then Collector of Internal Revenue for the First District of California, the sum of \$13,189.07, representing the amount of additional federal corporate income and excess-profits taxes shown to be due by the amended return filed by plaintiff as hereinabove set forth over and above the amount of federal corporate income taxes shown to be due

by the original return filed by plaintiff as hereinabove set forth and paid by plaintiff at the time of the filing of said original return. On December 28, 1935, plaintiff further paid to John V. Lewis, then Collector of Internal Revenue for the First District of California, the sum of \$626.48, representing interest on the said additional tax of \$13,189.07. On December 31, 1936, after audit by the Commissioner of Internal Revenue of the returns filed by plaintiff as aforesaid during the year 1935, plaintiff paid to John V. Lewis, then Collector of Internal Revenue for the First District of California, the further sum of \$16,972.23, representing \$15,323.01 surtax on personal holding companies for the year 1934 and \$1,649.22 interest on said surtax. Such surtax was imposed by the Commissioner of Internal Revenue by virtue of the failure of plaintiff to distribute to its stockholders [11] the alleged income realized by plaintiff as a result of the capital gain reported by plaintiff in its amended federal corporation income and excess-profits tax return for the calendar year 1934 resulting from the disposition by plaintiff of the certificates of deposit covering \$85,600.00 principal amount of bonds of Sacramento Medico Dental Building, Inc. and of the certificates of deposit covering \$136,000.00 principal amount of bonds of Whitney Estate Company.

XXIII.

By reason of the fact that plaintiff had no net income for the calendar year 1934 in excess of the amount of net income reported by plaintiff in the

original federal corporation income and excess-profits tax return filed by plaintiff for said year, no federal corporate income or excess profits taxes in excess of the amount shown to be due on the original return filed by plaintiff for the calendar year 1934 were properly payable by plaintiff for said year and no surtax on personal holding companies was properly payable by plaintiff for said calendar year. Accordingly, federal corporate income and excess-profits taxes and surtax on personal holding companies and interest thereon in the aggregate sum of \$30,787.78 were erroneously and illegally assessed and collected from plaintiff by John V. Lewis, former Collector of Internal Revenue for the First District of California.

XXIV.

Within the time and in the manner and form provided by law, plaintiff duly and regularly filed with the Commissioner of Internal Revenue its claim for refund of the sum of \$30,787.78 as and for federal corporate income and excess-profits taxes and surtax on personal holding companies illegally [12] and erroneously assessed and collected from plaintiff on account of taxes for the calendar year 1934. In said claim for refund, plaintiff relied upon the grounds set forth in this complaint. More than six months have elapsed since the date of the filing of said claim for refund. The Commissioner of Internal Revenue has neither allowed said claim for refund nor has he mailed to plaintiff by

registered mail a notice of the disallowance of said claim, or any part thereof.

XXV.

No assignment or transfer of the claim which is the subject matter of this action has ever been made and plaintiff is the sole owner thereof. Plaintiff is fully entitled to the amount herein claimed from defendant and there is no just credit or offset against the said claim which is known to plaintiff.

Wherefore, plaintiff prays judgment against defendant for the sum of \$30,787.78, with interest at the rate of six per cent (6%) per annum from December 28, 1935 on the sum of \$13,815.55 and from December 31, 1936 on the sum of \$16,972.23 to a date preceding the date of the refund check by not more than thirty days and together with plaintiff's costs of suit herein incurred.

JOHN C. ALTMAN

Attorney for Plaintiff. [13]

State of California,

City and County of San Francisco.—ss.

John C. Altman, being first duly sworn, deposes and says:

That he is an officer, to-wit, President, of Santa Inez Company, a corporation, the above named plaintiff, and makes this verification as such officer for and on behalf of said plaintiff; that he has read the above and foregoing complaint for recovery of taxes, and knows the contents thereof; that the same is true of his own knowledge, except as to

matters therein stated upon information or belief, and as to such matters, he believes it to be true.

JOHN C. ALTMAN

Subscribed and sworn to before me this 17th day of February, 1941.

[Seal] LOUIS WIENER

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Feb. 18, 1941. [14]

[Title of District Court and Cause.]

ANSWER OF THE UNITED STATES

Now comes the defendant above named, and answers the complaint herein as follows:

I.

Answering Paragraph I of the complaint, defendant admits that this action is brought to recover Federal corporate income taxes; denies that the said taxes were erroneously and illegally assessed and collected. All other allegations of said Paragraph are admitted. [15]

II.

Admits the allegations of Paragraphs numbered II, III, IV, V and VI of the complaint.

III.

Answering Paragraph numbered VII of the complaint, defendant admits that on March 6, 1934,

a written plan of reorganization of the old corporation was entered into between the bondholders' committee, the old corporation and plaintiff, as the largest owner of outstanding bonds of the old corporation, but specifically denies that the said plan constituted a non-taxable reorganization; admits that subsequently said plan of reorganization was amended; and, except as thus expressly admitted, denies each and every other allegations of said Paragraph 7 of the complaint.

IV.

Answering Paragraph numbered VIII of the complaint, defendant admits that in pursuance of the said plan as amended certain proceedings were taken. However, defendant is without sufficient information to answer the said sub-paragraphs (a) to (d), inclusive, of said Paragraph VIII, and, therefor, denies them.

V.

Denies the allegations of Paragraph numbered IX of the complaint.

VI.

Answering Paragraph numbered X of the complaint, it is admitted that on October 30, 1934, plaintiff was the owner [16] of certificates of deposit covering \$85,600 principal amount of bonds of the old corporation which plaintiff had theretofore acquired by purchase for the sum of \$36,644.42. It is admitted that said certificates of deposit represented \$85,600, the principal amount of said bonds

which had theretofore been deposited with the Committee under and pursuant to the deposit agreement hereinbefore referred to. All other allegations of said Paragraph are denied. Further answering Paragraph X, defendant alleges that on October 30, 1934, at a foreclosure sale the Bondholders' Protective Committee acquired the first mortgage bonds of the Sacramento Medico Dental Building, Inc., which then had a fair market value of \$300,000; that a total of \$400,000 of bonds out of \$416,500 in bonds outstanding participated in the acquisition of the property by the Committee; and that the plaintiff realized its pro rata of the value of the property. Except as thus expressly admitted, defendant denies each and every allegation of Paragraph numbered X of the complaint.

VII.

Denies the allegations of Paragraph XI of the complaint.

VIII.

Admits the allegations of Paragraph XII of the complaint.

IX.

Admits the allegations of Paragraphs numbered XIII and XIV of the complaint. [17]

X.

Answering Paragraph numbered XV of the complaint, defendant admits that on February 28, 1934, pursuant to a request theretofore made upon it by said Committee, the American Trust Company,

under the mortgage securing said bonds, caused the aforementioned real estate and buildings which were subject to said mortgage to be sold at public auction; admits that at said sale said real estate and buildings were purchased by the said Committee for the benefit of depositing bondholders for a sum less than the face amount of the outstanding bonds. Defendant has no information or belief upon the remaining allegations of said Paragraph, and, therefore, denies them.

XI.

Denies the allegations of Paragraph XVI of the complaint.

XII.

The allegations of Paragraph numbered XVII of the complaint are denied. Further answering Paragraph XVII, defendant alleges that it was not until the bondholders came into possession of the property, about June 1, 1934, that a new corporation, One Thirty-Three Geary Corporation, was contemplated as being the best means of operating the building; that there was not at any time a continuing process of reorganization in pursuance of a well-defined plan.

XIII.

The allegations of Paragraphs numbered XVIII and XIX are denied. [18]

XIV.

Admits the allegations of Paragraph numbered XX of the complaint.

XV.

Answering Paragraph numbered XXI of the complaint, it is admitted that plaintiff filed with John V. Lewis, then Collector of Internal Revenue for the First Collection District of California, on December 31, 1935, rather than December 28, 1935, as alleged, an amended Federal corporation income and excess-profits tax return for the calendar year 1934. It is admitted that in said amended return plaintiff reported and included as gross income the sum of \$27,555.58 as capital gain resulting from the disposition by plaintiff of the certificates of deposit covering \$85,600 principal amount of bonds of Sacramento Medico Dental Building, Inc. It is admitted that such capital gain was determined by subtracting the sum of \$36,644.42 (representing the cost of said bonds to plaintiff) from the sum of \$64,200 (representing plaintiff's pro rata share of the fair market value, as of the date of the Trustee's sale, of the property which was subject to the trust indenture securing the bonds of Sacramento Medico Dental Building, Inc., and which was purchased by the Committee for the benefit of the depositing bondholders). It is denied that the said above-mentioned report of income in said amended return was an erroneous report. (It is further admitted that in said amended return plaintiff reported and included a gross income in the sum of \$44,907.70 as capital gain resulting from the disposition by plaintiff of the certificates of deposit covering \$136,000 principal amount of bonds of Whitney [19] Estate Company. It is admitted that such capital gain

was determined by subtracting the sum of \$59,421.25 (representing the cost of said bonds to plaintiff) from the sum of \$104,328.95 (representing plaintiff's pro rata share of the fair market value, as of the date of the Trustee's sale, of the property which was subject to the mortgage securing the bonds of Whitney Estate Company and which was purchased by the Committee for the benefit of the depositing bondholders). It is denied that the said report was erroneous.)

XVI.

The allegations of Paragraph XXII are admitted.

XVII.

Denies the allegations of Paragraph numbered XXIII of the complaint. Further, defendant alleges that the determination of the tax as set forth in Paragraph XXII of plaintiff's complaint and the payment thereof in the aggregate sum of \$30,787.78, as set forth in Paragraph XXIII of plaintiff's complaint, were in all respects correct and in accord with the proper interpretation of the applicable Revenue Act as applied to the plaintiff's income for the year in question.

XVIII.

Answering Paragraph numbered XXIV of the complaint, it is admitted that within the time and in the manner and form provided by law plaintiff duly and regularly filed with the Commissioner of Internal Revenue its claim for refund of the [20] sum of \$30,787.78 as and for Federal corporate

income and excess-profits taxes and surtax on the personal holding companies assessed and collected from plaintiff on account of taxes for the calendar year. It is admitted that in said claim for refund plaintiff relied upon the grounds set forth in its complaint. Except as thus expressly admitted, defendant denies each and every allegations of said Paragraph numbered XXIV of the complaint.

XIX.

Answering Paragraph numbered XXV of the complaint, defendant has no information or belief in the allegation that no assignment or transfer of the claim which is the subject matter of this action has ever been made and that plaintiff is the sole owner thereof, therefore denies said allegations. Denies the remaining allegations contained in Paragraph numbered XXV of the complaint.

XX.

Further answering, defendant alleges that the facts and circumstances of the transaction having to do with the acquisition of the assets of plaintiff's predecessor corporation fail to give the transaction the status of a non-taxable reorganization, under the provisions of law. Defendant alleges that the determination of the Commissioner of Internal Revenue and the assessment of the tax against plaintiff for the year in question and for which this suit is brought were in all respects proper and in accord with the provisions of the applicable Revenue Act.

Wherefore, defendant prays judgment in its favor and for its costs and for such other relief as may be just.

FRANK J. HENNESSY

United States Attorney

ESTHER B. PHILLIPS

Assistant United States

Attorney

Attorneys for Defendant

[Endorsed]: Filed May 28, 1941. [22]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

The above entitled cause came on regularly for trial on the 10th day of July, 1942, before the above entitled Court, Honorable Claude McColloch, Judge presiding, without a jury, a jury having been duly waived; Willard L. Ellis, Esq., appearing as attorney for plaintiff and Frank J. Hennessy, United States Attorney, and Miss Esther B. Phillips, Assistant United States Attorney, appearing as attorneys for defendant, and after trial and the introduction of evidence, both oral and documentary, the said cause was submitted to the Court for its consideration and decision upon the issue as to the gain, if any, realized by plaintiff upon the disposition of bonds of Whitney Estate Company, [23] plaintiff having abandoned its contention that no

gain was realized upon the disposition of bonds of Sacramento Medico Dental Building, Inc., and the Court having considered the evidence, does now make the following

FINDINGS OF FACT

I.

This action was brought to recover Federal corporate income and excess-profits taxes erroneously and illegally assessed and collected. The amount claimed in this action exceeds \$10,000.00. Said taxes were collected by John V. Lewis, former Collector of Internal Revenue for the First District of California, and said John V. Lewis was not at the time of filing of the complaint herein, and is not now in office as Collector of Internal Revenue. Jurisdiction of this Court is based upon the provisions of Section 24, subdivision 20 of the Judicial Code as amended; Title 28, U.S.C.A., Section 41, subdivision 20.

II.

At all times herein mentioned plaintiff was and now is a corporation duly organized and existing under and by virtue of the laws of the State of California.

III.

At all times herein mentioned plaintiff has kept its books of account and filed its tax returns upon the cash receipts and disbursements basis and upon the basis of a calendar year.

IV.

On April 15, 1933 Whitney Estate Company was the owner of certain real estate in San Francisco, California, with an office building situated thereon.

V.

On or about April 15, 1928 Whitney Estate Company created an original issue of \$1,200,000.00 principal amount of [24] first mortgage bonds and contemporaneously therewith, as security for the payment of said bonds, executed a mortgage in favor of American Trust Company as trustee under which said real estate and office building were mortgaged to said trustee to secure the payment of said bonds.

VI.

On April 15, 1933 there were issued and outstanding bonds of the aforementioned issue of the aggregate principal amount of \$1,175,000.00. On said date Whitney Estate Company defaulted in the payment of interest on said bonds and in the payment of the principal amount of such of said bonds as matured on April 15, 1933, which defaults were never cured. On or about June 1, 1933 a Bondholders' Protective Committee was formed for the purpose of safeguarding the interests of all of the holders of said bonds. Pursuant to a deposit agreement entered into between said Committee and holders of said bonds, bonds were deposited with said Committee by the holders thereof and said Committee issued to said depositing bondholders certificates of deposit evidencing the deposit of said bonds.

VII.

In January, 1934, the Committee formulated a plan whereby American Trust Company, as trustee under the mortgage securing said bonds, would cause the aforementioned real estate and office building, subject to said mortgage, to be sold at public auction and purchased by the Committee for the benefit of the depositing bondholders, and whereby the property so purchased by the Committee would thereafter be transferred to a new corporation in exchange for all of the stock of said new corporation. On February 28, 1934, pursuant to a request therefor made upon it by said Committee, the American Trust Company, as trustee under the mortgage [25] securing said bonds, caused the aforementioned real estate and office building which were subject to said mortgage, to be sold at public auction. At said sale real estate and building were purchased by said Committee for the benefit of the depositing bondholders for a sum less than the face amount of said outstanding bonds. At the date of said sale an aggregate of \$1,113,000.00 principal amount of said bonds, representing approximately 95% of the then issued and outstanding bonds were on deposit with said Committee. Subsequent to February 28, 1934 an additional \$2,000.00 principal amount of bonds were accepted by the Committee for deposit. The purchase price of the real estate and building purchased at said Trustee's sale was paid in manner following: By applying toward the payment of the purchase price the distributive share of the net proceeds of sale inuring to the \$1,-

\$650,000
[R. 117]

115,000.00 principal amount of bonds held by the Committee and by paying to the Trustee in cash the distributive share of the net proceeds of sale inuring to the non-depositing bondholders.

VIII.

Because of the pendency of certain litigations to which Whitney Estate Company, the trustee and the Committee were parties, the Committee was unable until May 15, 1934, to obtain possession and clear title to the property which it purchased at the trustee's sale. Immediately after obtaining possession and clear title to said property, the Committee proceeded with its plan to organize a new corporation and to transfer to said new corporation the property which it purchased at the trustee's sale. Said new corporation which was known as "One Thirty-three Geary Corporation", was incorporated on September 4, 1934. (On or about November 30, 1934, the real estate and building which the Committee [26] had acquired at the trustee's sale was transferred to said new corporation and in exchange therefor the new corporation delivered to said Committee for the ratable benefit of the depositing bondholders of Whitney Estate Company, 11,150 shares of the no par capital stock of One Thirty-three Geary Corporation, being all of its issued capital stock and constituting the sole consideration for the transfer of said real estate and building to One Thirty-three Geary Corporation.)

IX.

On February 28, 1934, plaintiff was the owner

of certificates of deposit covering \$136,000.00 principal amount of bonds of the Whitney Estate Company which plaintiff had theretofore acquired by purchase for the sum of \$59,421.25. Said certificates of deposit represented \$136,000.00 principal amount of said bonds which had theretofore been deposited with said Committee under and pursuant to the deposit agreement hereinabove referred to.

On December 10, 1934 plaintiff exchanged said certificates of deposit representing \$136,000.00 principal amount of Whitney Estate Company solely for 1,360 shares of no par value capital stock of One Thirty-three Geary Corporation. Said exchange was made pursuant to the plan formulated by the Committee and pursuant to the proceedings hereinabove referred to.

X.

Continuously from April 15, 1933, to and including November 30, 1934, the value of all of the property owned by Whitney Estate Company was substantially less than the principal amount of its outstanding bonds.

XI.

Plaintiff realized no gain or loss as a result of the purchase by the Committee on February 28, 1934, for the benefit [27] of depositing bondholders, of the property which was subject to the mortgage securing the bonds of Whitney Estate Company. The exchange by plaintiff on December 10, 1934, of its certificates of deposit covering \$136,000.00 principal amount of bonds of Whitney Estate Company solely for 1,360 shares of no par value capi-

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188

tal stock of One Thirty-three Geary Corporation gave rise to neither gain nor loss and said exchange constituted a tax-free exchange under the provisions of Section 112(b)(5) of the Revenue Act of 1934.

XII.

In the original federal corporation income and excess-profits tax return filed by plaintiff for the calendar year 1934, plaintiff did not report nor include any gain as a result of the exchange by plaintiff of the certificates of deposit covering \$136,000.00 principal amount of bonds of Whitney Estate Company for 1,360 shares of stock of One Thirty-Three Geary Corporation. The net income reported in said original return was the sum of \$7,169.06 and the amount of income tax shown to be due by said original return was the sum of \$985.75, which sum was paid by plaintiff in the year 1935.

XIII.

On December 28, 1935 plaintiff filed with John V. Lewis, then Collector of Internal Revenue for the First District of California, an amended federal corporation income and excess-profits tax return for the calendar year 1934. In said amended return plaintiff erroneously reported and included as gross income the sum of \$44,907.70 as capital gain resulting from the disposition by plaintiff of the certificates of deposit covering \$136,000.00 principal amount of bonds of Whitney Estate Company; such capital gain was determined by subtracting the sum of [28] \$59,421.25 (representing

the cost of said bonds to plaintiff) from the sum of \$104,328.95 (representing plaintiff's pro rata share of the fair market value, as of the date of the Trustee's sale, of the property which was subject to the mortgage securing the bonds of Whitney Estate Company and which was purchased by the Committee for the benefit of the depositing bondholders).

XIV.

On December 28, 1935, plaintiff paid to John V. Lewis, then Collector of Internal Revenue for the First District of California, the sum of \$13,189.07, representing the amount of additional federal corporate income and excess-profits taxes shown to be due by the amended return filed by plaintiff as hereinabove set forth over and above the amount of federal corporate income taxes shown to be due by the original return filed by plaintiff as hereinabove set forth and paid by plaintiff at the time of the filing of said original return. On December 28, 1935, plaintiff further paid to John V. Lewis, then Collector of Internal Revenue for the First District of California, the sum of \$626.48, representing interest on the said additional tax of \$13,189.07. On December 31, 1936, after audit by the Commissioner of Internal Revenue of the returns filed by plaintiff as aforesaid during the year 1935, plaintiff paid to John V. Lewis, then Collector of Internal Revenue for the First District of California, the further sum of \$16,972.23, representing \$15,323.01 surtax on personal holding companies for the year 1934 and \$1,649.22 interest on said sur-

tax. Such surtax was imposed by the Commissioner of Internal Revenue by virtue of the failure of plaintiff to distribute to its stockholders the alleged net income realized by plaintiff as a result of the capital gain reported by plaintiff in its amended federal corporation income and excess profits tax return [29] for the calendar year 1934 resulting from the disposition by plaintiff of the certificates of deposit covering \$136,000.00 principal amount of bonds of Whitney Estate Company, and also the income realized by plaintiff as a result of a capital gain of \$27,555.58 resulting from a separate and independent transaction.

XV.

The correct net income of plaintiff for the calendar year 1934 was the sum of \$34,724.64 and the Federal corporation income and excess profits taxes and surtax on personal holding companies properly payable by plaintiff on said net income were as follows, to-wit:

Income Tax	\$4,774.64
Excess Profits Tax	979.99
Surtax on Personal Holding Companies	4,545.16
	\$10,299.79

Accordingly, there was erroneously and illegally assessed and collected from plaintiff by John V. Lewis, Collector of Internal Revenue for the First District of California, the total sum of \$21,031.35, consisting of the following amounts:

Federal corporation income and excess profits taxes and surtax on personal holding companies	\$19,198.04
Interest paid December 31, 1936	1,649.22
Interest paid December 28, 1935	184.09
	<hr/>
	\$21,031.35

XVI.

Within the time and in the manner and form provided by law, plaintiff duly and regularly filed with the Commissioner of Internal Revenue its claim for refund of the sum of \$30,787.78 [30] as and for Federal corporation income and excess profits taxes and surtax on personal holding companies. In said claim for refund plaintiff relied upon the grounds set forth in the complaint filed herein. The Commissioner of Internal Revenue has neither allowed said claim for refund nor has he mailed to plaintiff by registered mail a notice of disallowance of said claim or any part thereof. More than six months have elapsed between the date of the filing of said claim for refund and the date of the filing of the complaint in the above entitled action.

XVII.

No part of the sum of \$21,031.35 illegally assessed and collected from plaintiff as aforesaid, or any interest on said sum, has been repaid or refunded and the whole thereof, to-wit: the sum of \$21,031.35, with interest on the sum of \$16,972.23 from December 31, 1936, at the rate of 6% per annum as provided by law, and interest on the sum of \$4,-

059.12 from December 28, 1935, at the rate of 6% per annum as provided by law is now due and owing from defendant to plaintiff.

XVIII.

No assignment or transfer of the claim which is the subject matter of this action has ever been made and plaintiff is the sole owner thereof. Plaintiff is justly entitled to the amount set forth in paragraph XVII hereof.

CONCLUSIONS OF LAW

And as conclusions of law from the foregoing facts found, the Court determines:

(1) That plaintiff, Santa Inez Company, a corporation, is entitled to have and recover of and from the United States of America, defendant, the sum of \$21,031.35, with interest on the [31] sum of \$16,972.23 at the rate of 6% per annum from the 31st day of December, 1936, to a date preceding the date of the refund check by not more than thirty days, and with interest on the sum of \$4,059.12 at the rate of 6% per annum from the 28th day of December, 1935, to a date preceding the date of the refund check by not more than thirty days.

(2) That plaintiff have and recover its costs of suit herein expended, taxed at the sum of \$.....

Let judgment be entered accordingly.

Dated this 18th day of November 1942.

CLAUDE McCOLLOCH

United States District Judge.

[Endorsed]: Filed Nov. 18, 1942. [32]

In the United States District Court
For the Northern District of California,
Southern Division

No. 21785-L

SANTA INEZ COMPANY, a corporation,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

The above entitled cause came on regularly for trial on the 10th day of July, 1942, before the above entitled Court, Honorable Claude McColloch, Judge, presiding, without a jury, a jury having been waived; Willard L. Ellis, Esquire, appearing as attorney for plaintiff, and Frank J. Hennessy, Esquire, United States Attorney, and Miss Esther B. Phillips, Assistant United States Attorney, appearing as attorneys for defendant; and oral and documentary evidence having been introduced, and the cause having been submitted to the Court for decision, and the Court having heretofore made and caused to be filed herein its written findings of fact and conclusions of law, and ordered that judgment be entered in accordance with said findings;

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed [33] that plaintiff, Santa Inez Company, a corporation, shall have and recover judgment against the United States of America, de-

fendant, for the sum of \$21,031.35, with interest on the sum of \$16,972.23 at the rate of 6% per annum, from the 31st day of December, 1936, to a date preceding the date of the refund check by not more than thirty days, and with interest on the sum of \$4,059.12 at the rate of 6% Per annum from the 28th day of December, 1935, to a date preceding the date of the refund check by not more than thirty days.

It Is Further Ordered, Adjudged and Decreed that plaintiff do have and recover from defendant its costs of suit herein expended, taxed at the sum of \$.....

Judgment entered this 18th day of November 1942.

CLAUDE McCOLLOCH
District Judge

[Endorsed]: Filed Nov. 18, 1942. [34]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Now comes the defendant above-named, appearing by Frank J. Hennessy, United States Attorney for the Northern District of California, and hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment entered by the United States District Court for the Northern District of California in favor

of the plaintiff against the defendant on November 18, 1942, in the above-entitled case.

Dated: February 16, 1943.

FRANK J. HENNESSY

United States Attorney,

ESTHER B. PHILLIPS

Assistant United States At-
torney.

[Endorsed]: Filed Feb. 16, 1943. [35]

[Title of District Court and Cause.]

STATEMENT OF POINTS TO BE RELIED
ON BY DEFENDANT

The defendant having taken an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment rendered by the District Court for the Northern District of California, hereby designates the following points to be relied on in the prosecution of said appeal:

I.

That the District Court erred in rendering judgment for plaintiff in that said judgment is contrary to the facts found by the Court.

II.

That the District Court erred in that portion of its finding of fact numbered XI, to-wit, that plaintiff realized [36] no gain or loss as a result of the purchase by the Committee on February 28, 1934,

for the benefit of the depositing bondholders of the property which was subject to the mortgage securing the bonds of Whitney Estate Company.

III.

That the District Court erred in that portion of its finding of fact numbered XIII, to-wit, that in said amended return plaintiff erroneously reported and included as gross income the sum of \$44,907.70 as capital gain resulting from the disposition by the plaintiff of the certificates of deposit covering \$136,000, principal amount of bonds of Whitney Estate Company; such capital gain was determined by subtracting the sum of \$59,421.25 (representing the cost of said bonds to plaintiff) from the sum of \$104,328.95 (representing plaintiff's pro rata share of the fair market value as of the date of the trustee's sale of the property, which was subject to the mortgage securing the bonds of Whitney Estate Company and which was purchased by the Committee for the benefit of the depositing bondholders.)

IV.

That the District Court erred in that portion of its finding of fact numbered XV, to-wit, that the correct net income of the plaintiff for the calendar year 1934, was the sum of \$34,724.64 (instead of the sum of \$44,907.70, as reported in said amended return of income and excess-profits tax for the calendar year 1934 as a capital gain resulting from the disposition by plaintiff of the certificates of deposit covering \$136,000, principal amount of bonds of Whitney Estate Company), and holding

that the sum of \$21,031.35, income tax and interest for said year and based thereon, was erroneously and illegally assessed and collected from the plaintiff by [37] John V. Lewis, former Collector of Internal Revenue.

V.

That the District Court erred in failing to find as a fact and conclude as a matter of law that the transaction and purchase by the (Bondholders Protective) Committee on February 28, 1934 for the benefit of the depositing bondholders of the property which was subject to the mortgage securing the bonds of Whitney Estate Company, was a sale or exchange of property taxable under the provisions of Section 112 (a) of the Revenue Act of 1934.

VI.

That the District Court erred in failing to find and conclude as a matter of law that the foreclosure sale on February 28, 1934 was a separate and distinct transaction from the subsequent transfer of the property to a new corporation and was therefore not controlled by the provisions of Section 112 (b) (5) of the Revenue Act of 1934.

VII.

That the District Court erred in failing to find and conclude as a matter of law that since the gain upon which plaintiff was taxed, namely, the sale on February 28, 1934, was a transaction which was separate and distinct from and anterior to the exchange by plaintiff on December 10, 1934, it must

be recognized under the general rule of Section 112 (a) of the Revenue Act of 1934.

VIII.

That the District Court erred in failing and refusing to order judgment for the defendant and against the plaintiff.

FRANK J. HENNESSY

United States Attorney,

ESTHER B. PHILLIPS

Assistant United States Attorney.

(Receipt of Service.)

[Endorsed]: Filed May 7, 1943. [38]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

The defendant above named having taken an appeal from the judgment entered herein on November 18, 1942, to the United States Circuit Court of Appeals for the Ninth Circuit, hereby designates the following parts of the record and proceedings for inclusion in the record on appeal:

- (1) The Complaint;
- (2) The Answer;
- (3) The transcript of testimony taken upon the trial of the case;
- (3) All exhibits received in evidence upon the trial of said case;

- (5) Memorandum Order of the Court for Judgment for Plaintiff upon Findings; [39]
- (6) Findings of Fact and Conclusions of Law;
- (7) The Judgment;
- (8) Notice of Appeal Filed February 16, 1943;
- (9) Statement of the Points intended to be relied upon by defendant in this appeal;
- (10) This designation of the record on appeal;
- (11) All orders extending the time to docket the record on appeal.

FRANK J. HENNESSY

United States Attorney,

ESTHER B. PHILLIPS

Assistant United States Attorney.

(Receipt of Service.)

[Endorsed]: Filed May 7, 1943. [40]

[Title of District Court and Cause.]

ORDER FOR TRANSMITTAL
OF TRANSCRIPT.

It is Hereby Ordered that the Clerk of the United States District Court transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit the original transcript of the testimony received on the trial of the above-entitled case for use as a part of the record on appeal of said case.

Dated: July 19th 1943.

MICHAEL J. ROCHE

United States District Judge.

[Endorsed]: Filed July 19, 1943. [41]

[Title of District Court and Cause.]

ORDER FOR TRANSMISSION
OF EXHIBITS

It Is Hereby Ordered that the Clerk of the United States District Court transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit all of the original exhibits offered and received in evidence in the trial of the above-entitled case for use as a part of the record on appeal to the United States Circuit Court of Appeals in this case.

Dated: May 7, 1943.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed May 7, 1943. [42]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR DOCKET-
ING RECORD IN THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

Upon application of Frank J. Hennessy, United States Attorney for the Northern District of Cali-

fornia, appearing by Esther B. Phillips, Assistant United States Attorney, it is Hereby Ordered that the United States of America may have to and including April 16, 1943, in which to docket its record on appeal in the above entitled case.

Dated: March 25, 1943.

A. F. ST. SURE

United States District Judge.

[Endorsed]: Filed Mar. 25, 1943. [43]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR DOCKET-
ING RECORD IN THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE
NINTH CIRCUIT

Upon application of Frank J. Hennessy, United States Attorney for the Northern District of California, appearing by Esther B. Phillips, Assistant United States Attorney, it is Hereby Ordered that the United States of America may have to and including May 17, 1943, in which to docket its record on appeal in the above entitled case.

Dated: April 14th 1943.

LOUIS E. GOODMAN

United States District Judge.

[Endorsed]: Filed Apr. 14, 1943. [44]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO DOCKET
RECORD ON APPEAL

Upon application of Frank J. Hennessy, United States Attorney for the Northern District of California, appearing for the Appellant above-named, it is Hereby Ordered that the Appellant may have to and including June 1, 1943, in which to docket its record on appeal in the above-entitled case.

Dated: May 11, 1943.

FRANCIS A. GARRECHT

United States Circuit Judge.

A True Copy.

Attest: May 12, 1943

(Seal)

PAUL P. O'BRIEN

Clerk.

[Endorsed]: Filed May 12, 1943. Paul P. O'Brien, Clerk.

[Endorsed]: Filed, May 12, 1943, Walter B. Maling, Clerk. [45]

In the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 10499

UNITED STATES OF AMERICA,

Appellant,

vs.

SANTA INEZ COMPANY, a corporation,

Appellee.

ORDER EXTENDING TIME TO DOCKET
RECORD ON APPEAL

Upon application of Frank J. Hennessy, United States Attorney for the Northern District of California, appearing for the appellant above named, it is Hereby Ordered that the appellant may have to and including July 1, 1943, in which to docket its record on appeal in the above entitled case.

Dated: June 1, 1943.

CURTIS D. WILBUR.

United States Circuit Judge.

A True Copy,

Attest, June 1, 1943.

(Seal) PAUL P. O'BRIEN

Clerk.

[Endorsed]: Filed June 1, 1943, Paul P. O'Brien, Clerk. [46]

[Title of Circuit Court of Appeals and Cause.]

ORDER EXTENDING TIME TO DOCKET
RECORD ON APPEAL

Upon application of Frank J. Hennessy, United States Attorney for the Northern District of California, appearing for the appellant above named, it is Hereby Ordered that the appellant may have to and including August 2, 1943, in which to docket its record on appeal in the above entitled case.

Dated: June 29, 1943.

FRANCIS A. GARRECHT

United States Circuit Judge.

A True Copy,

Attest. June 29, 1943.

(Seal) PAUL P. O'BRIEN

Clerk.

[Endorsed]: Filed June 29, 1943. Paul P. O'Brien, Clerk. [47]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 47 pages, numbered from 1 to 47, inclusive, together with one Volume of the Reporter's Transcript contain a full, true, and correct transcript of the rec-

ords and proceedings in the case of Santa Inez Company, a Corp., Plaintiff, vs. United States of America, Defendant. No. 21785-L., as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Six-dollars and eighty-cents (\$6.80) and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 19th day of July A. D. 1943.

(Seal)

C. W. CALBREATH

Clerk

WM. J. CROSBY

Deputy Clerk. [48]

In the Southern Division of the United States
District Court, in and for the Northern District
of California.

No. 21785-L

SANTA INEZ COMPANY, a corporation,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

Counsel Appearing:

For Plaintiff:

WILLARD L. ELLIS, Esq.

For Defendant:

ESTHER B. PHILLIPS, Assistant U. S.
Attorney.

Friday, July 10, 1942.

Before: Hon. Claude McCulloch, Judge.

TESTIMONY

Mr. Ellis: I will have to enter an appearance,
as Mr. Altman, who was the attorney of record, has
died.

The Court: Very well.

Mr. Ellis: If your Honor please, I don't know
whether your Honor has read the proceedings in
this case.

The Court: Yes, I have.

8 | Mr. Ellis: Your Honor will note that in the
complaint we refer to two different corporate re-

organizations, one of them relating to Sacramento Medico-Dental Building Company, and the other the Whitney Estate Company. We have decided to abandon the issue relative to the Sacramento Medico-Dental reorganization. Consequently, this case will be confined to the issue relating to the Whitney reorganization. That involves the elimination of [1*] paragraphs 4 to 11, inclusive, of the complaint, and I imagine that it would probably be advisable to have the complaint deemed to be amended on its face by striking all the allegations of paragraphs 4 to 11, inclusive. In that event, it won't be necessary for the Court to make any findings with respect to those allegations.

The Court: So understood.

Mr. Ellis: Did your Honor grant the motion?

The Court: Yes.

Miss Phillips: Yes, that is agreeable. I would suggest it might be simpler if the Court, in the findings, make a finding that counsel abandoned that much and then we won't need to bother about

....

The Court: It may stand like that as it is being recorded right here; the statements go into the record. We are just trying the one transaction now?

Mr. Ellis: Yes, your Honor. In our complaint we allege that the transaction involving the Whitney Estate Company bonds viewed in its entirety resulted in a tax-free exchange. In other words,

* Page numbering appearing at top of page of original Reporter's Transcript.

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Santa Inez Company owned certain bonds of Whitney Estate Company. There was a foreclosure, a sale, an acquisition of the property by depositing bondholders. The property was turned over subsequently to a company, a new corporation, in exchange for stock of the new corporation, and it is our contention that viewing the transaction in its entirety Santa Inez Company did not realize any gain upon the distribution of the bonds of Whitney Estate Company in 1934, but that it merely acquired new securities, and until the new securities were disposed of there was neither gain nor loss to be realized. We allege in the complaint the transaction was tax free either as a reorganiza- [2] tion or else as a tax-free exchange under the provisions of section 112 (b) (5) of the Revenue Act of 1934. Our contention is that a corporate reorganization was not effected and that the exchange was tax free under section 112 (b) (5) of the Revenue Act of 1934. That is the only contention I am making. My theory is, and there are decisions to support it, that the bondholders even before the foreclosure sale, because of insolvency of the corporation, were the equitable owners of the property, and that they transferred that property to a new corporation solely in exchange for the new corporation's stock, and that under the Revenue Act referred to, and by reason of the fact the bondholders were in control of the new corporation, I say this exchange was tax free.

Your Honor will note there are certain allegations in the complaint that have been admitted in

the answer, formal allegations such as the method of keeping books, filing returns, ownership of the real estate of Whitney Estate Company, the issuance of the bonds, the amount outstanding on the date of default, the default, itself, the formation of the bondholders committee, the depositing of bonds with the committee, and the sale of the property; also the formal allegation relating to the filing of the claim for refund, and disallowance of the claim. Therefore, our proof will be shortened substantially by the admissions in the answer.

Have you any statement to make, Miss Phillips?

Miss Phillips: I don't know that I can add very much to counsel's statement. The whole matter involving a tax-free reorganization is a complicated one. The reorganization provisions of the taxing statutes cover every taxable phase of a reorganization of a corporation. It is intended that the [3] exchange of securities be taxed, that the transfer of the corporate assets be covered.

The Court: You heard what Mr. Ellis said about the statute that he is relying on?

Miss Phillips: Yes.

The Court: Does that apply on reorganizations, as such?

Miss Phillips: I think so, your Honor. That is involved in the provisions of the statute as to whether, as a tax-free situation, there is an interrelation there, or a correlation of a tax-free exchange that takes place. Then you might say that the tax basis in the new securities continues just the same as the old if such were the case. If A buys

a bond in 1900 at a certain price, and sometime between 1900 and 1942, or say in the last ten years, there was an exchange which is tax free, then that 1900 basis carries over until he disposes of the new securities. If, however, there is not a tax-free exchange on reorganizations, then at the time the new security is received by the transferee, at that time taxable gain or loss can occur. It is almost wholly, I think, a question of law and statutory interpretation. I may say that the decisions have certainly added to the perplexity of counsel. There have not been a uniformity of decisions on the point, and I think the present situation will show inconsistencies, you might say, in the holdings of the courts.

I think that is about all I can add. I think the evidence will be largely documentary, and perhaps some additional stipulations.

LLOYD D. HANFORD,

called by the plaintiff; sworn.

Mr. Ellis: Q. Mr. Hanford, you are the general manager of [4] Santa Inez Company, the plaintiff in this action? A. I am.

Q. You are a licensed real estate broker?

A. I am.

Q. How long have you been engaged in the real estate business as a licensed broker?

A. Since about 1923.

Q. Continuously from the date of the formation of the Whitney Estate Company bondholders pro-

(Testimony of Lloyd D. Hanford.)

tective committee, which plaintiff alleges in its complaint and which is admitted was on June 1, 1933, you were a member of that committee?

A. I was.

Q. Your name, Mr. Hanford, was formerly Lloyd D. Hirschfeld? A. Yes.

Q. And it was legally changed by court hearing last year to Lloyd D. Hanford? A. Yes.

Q. So you are Mr. Hirschfeld who was a member of the bondholders committee of the Whitney Estate Company? A. That is correct.

Q. The office building on the property on Geary street that was covered by this Whitney Estate Company bond issue was known as the Whitney Building at one time, wasn't it? A. Yes.

Q. When I refer to the Whitney Building you know what I am talking about? A. Yes.

Q. I show you a printed copy of a document that is entitled, "The Whitney Estate Company Bondholders' Deposit Agreement," dated April 15, 1933, although upon opening it up it appears it was made as of the 1st day of June, 1933, and ask you whether or not this is a true and correct copy of the original Whitney Estate Company Bondholders' Deposit Agreement? A. Yes, sir.

Q. The original was signed by you as a member of the committee? A. That is correct.

Mr. Ellis: I offer the printed copy of the Whitney Estate Company Bondholders' Deposit Agreement in evidence as Plaintiff's Exhibit 1. [5]

(The document was marked Plaintiff's Exhibit 1.)

(Testimony of Lloyd D. Hanford.)

PLAINTIFF'S EXHIBIT No. 1

THE WHITNEY ESTATE COMPANY
BONDHOLDERS' DEPOSIT AGREEMENT
DATED: APRIL 15, 1933

This Agreement, made as of the first day of June, 1933, by and between Lloyd D. Hirschfeld, Gerald D. Kennedy, Philip Paschel, R. M. Underhill and F. W. Wentworth (hereinafter referred to as the "Committee"), first parties, and such holders of First Mortgage Five and One-half Per Cent Gold Bonds of The Whitney Estate Company as shall become parties to this agreement in the manner hereinafter provided (hereinafter referred to as the "Depositors"), second parties,

Witnesseth:

Whereas, The Whitney Estate Company, a California corporation (hereinafter referred to as the "Mortgagor"), heretofore executed and issued One Million Two Hundred Thousand Dollars (\$1,200,000) aggregate principal amount of its First Mortgage Five and One-half Per Cent Gold Bonds (hereinafter referred to as the "bonds") secured by a First Mortgage from the Mortgagor to American Trust Company as Trustee, dated April 15, 1928 (hereinafter referred to as the "Trust Indenture," and the property therein described being hereinafter referred to as the "Trust Property"); and,

Whereas, default has been made in the due observance or performance of certain of the covenants

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

and provisions in said Trust Indenture contained;
and,

Whereas, united action and cooperation on the part of the holders of the bonds of the Mortgagor is advisable and necessary in order that their rights and interests may be protected, and such united action and cooperation can best be procured by the means of a Committee, as in this Agreement provided; and,

Whereas, the Committee has consented to represent and to act for the Depositors as hereinafter set forth;

Now Therefore, in consideration of the premises and of the mutual advantages that will arise therefrom, all Depositors, each for himself, but not for the others, or any of them, agree with each other and with the Committee and with the Depositary hereinafter appointed, as follows:

Article I.

Deposit of Bonds and Issuance of Certificates of Deposit

Section 1. American Trust Company, a corporation organized and existing under and by virtue of the laws of the State of California and having its principal office in the City and County of San Francisco, State of California, is hereby appointed the Depositary under and according to the terms of this Agreement.

Section 2. This Agreement shall be signed by the members of the Committee and one executed

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

copy thereof shall be filed with the Depository at its said principal office. The holder of any of said bonds may deposit the same, together with the interest coupons appertaining thereto, in negotiable form, with the Depository at its principal office, and shall receive from the Depository a transferable Certificate of Deposit (said Certificate of Deposit being sometimes hereinafter referred to as "Certificates") substantially in the following form:

"Certificate of Deposit
for

The Whitney Estate Company

First Mortgage Five and One-half Per Cent
Gold Bonds.

No.....	\$.....
	Principal Amount.

Lloyd D. Hirschfeld, Gerald D. Kennedy, Philip Paschel, R. M. Underhill and F. W. Wentworth, as the Committee named in The Whitney Estate Company Bondholders' Deposit Agreement hereinafter referred to, hereby certify that they have received from
 whose address
 is
 Dollars (\$.....)
 aggregate principal amount of The Whitney Estate Company First Mortgage Five and One-half Per Cent Gold Bonds, bearing the serial numbers and of the denominations set forth on the reverse hereof,

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

issued under a First Mortgage from The Whitney Estate Company to American Trust Company, as Trustee, dated April 15, 1928, with coupons due April 15, 1933, and all subsequent coupons, attached to or accompanying the same, which bonds are deposited subject to and for the uses and purposes stated in the so-called The Whitney Estate Company Bondholders' Deposit Agreement, dated April 15, 1933, between Lloyd D. Hirschfeld, Gerald D. Kennedy, Philip Paschel, R. M. Underhill and F. W. Wentworth, as a Committee, first parties, and such Depositors of said bonds as may become parties thereto, second parties. Said Depositor and each successive holder of this certificate by acceptance hereof, assents to and agrees to be bound by the terms of said agreement, and to such action as may be taken by said Committee pursuant to said agreement, in the same manner and with the same effect as if he had executed the same. The interest represented hereby is assignable by transfer on the books kept for that purpose by American Trust Company, the Depositary named in said agreement, by the holder hereof in person or by agent, upon the surrender to said Depositary of this certificate properly endorsed, with the endorsement guaranteed by a bank or trust company, satisfactory to said Depositary, such transfer being subject to all the terms and conditions of said agreement. This certificate shall not be valid

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)
for any purpose unless it is countersigned by said
Depository.

Dated:, 1933.

.....
.....
.....
.....
.....

Committee.

Countersigned:

AMERICAN TRUST COMPANY
as Depository

By

Assistant Secretary.

By

Assistant Trust Officer.

(On reverse of Deposit Certificate)

THE WHITNEY ESTATE COMPANY

First Mortgage Five and One-half Per cent Gold Bonds de-
posited:

No.....	to.....	Inc. Denomination	\$.....	Total \$.....
.....
.....
.....
.....

Assignment.

No transfer is valid unless noted on the books of
the Depository.

The undersigned, holder of this certificate, and the

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

owner of the bonds represented thereby, hereby for value sells, assigns and transfers unto.....
.....
the within certificate and all rights and interest represented thereby, and does hereby irrevocably constitute and appoint.....
agent of the undersigned to transfer said certificate on the books of the Depository herein named with full power of substitution in the premises.

.....
(Signature of Owner)

Dated:, 19....

In the presence of

.....

Witness.

(To be printed only on Duplicates of Certificates of Deposit)

Received the original Certificate of Deposit of which the foregoing is a duplicate from American Trust Company, as Depository, this
day of, 19....

.....

Bondholder or Registered
Owner.”

The Depository shall, on the Committee's written direction (which may be given or withheld, either generally or in special instances, in the discretion of the Committee), accept:

- 1. Bonds which are not accompanied by any or

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

some of the unpaid coupons appertaining thereto; and/or

2. Coupons appertaining to any of said bonds apart from the bonds to which the coupons appertain;

and shall issue to the Depositors thereof, Certificates of Deposit which shall be substantially in the form and substance of that hereinbefore set out, adjusted, however to show the bonds and/or particular coupons actually deposited and received.

All such bonds and/or coupons so deposited shall be received by the Depositary on behalf of the Committee and be held subject to the sole control, direction and disposition of the Committee under the terms and provisions of this Agreement; and each holder of such bonds and/or coupons shall, upon so depositing the same, become a party to and be bound by all the terms and provisions of this Agreement, in the same manner and with the same effect as if he had personally signed this Agreement.

At the time of making the deposit of any bonds and/or coupons hereunder, each Depositor shall furnish to the Depositary, in writing, his post office address and from time to time thereafter shall notify such Depositary in writing of any change in such address. Such address or any change therein, written notice of which is given by the depositor to the Depositary prior to the mailing or sending of any notice or any other document or the distribution of any securities, shall be con-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

clusively deemed the correct mailing address of such Depositor for the mailing or sending of such notice, document or securities. Certificates of Deposit, stock certificates, bonds, notes, checks and any other securities which at any time may be issuable or distributable to the Depositor by the Depositary receiving said bonds and/or coupons may be mailed to him by such Depositary at his address appearing on the books of such Depositary, but such mailing shall be at the Depositor's risk.

Section 3. Said Certificates shall be registered in books kept by the Depositary for that purpose. No transfer (other than by operation of law) of any Certificate shall be valid unless made on said books by authorization of the registered holder in the manner provided herein and in said Certificate. Such transfer shall be recorded in the books of the Depositary and, upon surrender of the Certificate transferred, a new certificate therefor shall be issued to the transferee. In the event any Certificate shall be transferred prior to the date on which the Committee shall elect to take title to the deposited bonds as herein provided, such transfer of any Certificate shall be deemed to effect a sale and assignment to the transferee of such Certificate of the title to the deposited bonds and coupons for which such Certificate was issued. Any person presenting evidence satisfactory to the Depositary and the Committee that he has become entitled to any Certificate in consequence of the

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

death, bankruptcy or insolvency of the holder of such Certificate, or in any way other than by transfer in accordance with the requirements of the preceding part of this Section 3, shall be recorded in the books of the Depository as the holder of such Certificate and receive a new Certificate upon the delivery of the existing one to the Depository. If a Certificate shall be lost, stolen, mutilated or destroyed, the Depository may in its discretion issue a duplicate Certificate upon evidence of such fact, satisfactory to it and the Committee, and receipt of a bond of indemnity satisfactory to the Depository and the Committee, and surrender of the existing Certificate, if mutilated. Upon any reissuance or issuance upon loss, theft, mutilation or destruction of any Certificate, the holder thereof shall pay to the Depository any expenses involved in such service and shall further pay such fee as the Depository shall deem reasonable. The person in whose name any Certificate shall be issued, or the transferee thereof, shall be entitled to all the benefits and shall be subject to all the obligations of a Depositor hereunder, in the same manner and with the same effect as though such person or transferee had originally deposited the bonds and/or coupons represented by such Certificate and with like effect as if this Agreement had been signed by him in person. The terms "Depositor" and "Depositors", whenever hereinafter used, shall include not only the original Depositor or Depositors,

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

but as well the registered holder or holders at any time of any Certificate by the transfer thereof. The Committee and the Depository may treat the registered holder, for the time being, of each Certificate of Deposit, or when presented duly endorsed in blank by such registered holder, the bearer of such Certificate, as the absolute owner thereof and of all the rights and interest of the original Depositor of the bonds and/or coupons in respect to which the same was issued, and neither the Depository nor the Committee shall be bound or be affected by any notice to the contrary or of any trust, whether express, implied or constructive, or of any charge or equity respecting the title or ownership of such Certificate or of the bonds and/or coupons represented thereby.

Section 4. The Committee in its discretion may fix or may limit the period or periods within which holders may deposit their bonds and/or coupons and within which they may become parties to this Agreement, and, in its discretion, either generally or in special instances, may extend or renew the period or periods so fixed or limited for such further periods and upon such terms and conditions as the Committee may see fit. Holders of bonds and/or coupons not so deposited within such period or periods will not be entitled to deposit the same, or to become parties to this Agreement, or to share in the benefits hereof, and shall acquire no rights hereunder, except upon obtaining the express

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

consent of the Committee as in this Section provided. At any time and upon such terms as it may deem proper from time to time, the Committee may direct that the Depositary accept from any Depositor the surrender of any Certificates issued hereunder, and, upon receipt thereof and in exchange therefor, surrender and deliver the securities represented thereby or anything then held by the Depositary and/or the Committee in lieu thereof.

Section 5. The Depositary is fully authorized and empowered to transfer and deliver and dispose of any and all of such bonds and/or coupons deposited hereunder, in accordance with the written order or orders from time to time of the Committee, and all such orders shall be good and valid if signed by a majority of the Committee as it is from time to time constituted, or certified to the Depositary as having been so signed or adopted as provided in Article VIII hereof. The Depositary shall, at all times, be free from all liability and responsibility in dealing with or disposing of bonds and/or coupons deposited hereunder, as directed by the Committee.

Article II.

Personnel and Duties of the Committee.

Section 1. Said parties of the first part their survivors and successors, shall be and are hereby appointed and constituted the Committee, subject to the terms hereof, so long as they shall continue to act. They shall elect a Chairman of said Com-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

mittee, who shall be a member thereof, provided, however, that the Chairman hereby nominated, as set forth in Article X hereof, shall be and continue to act as such until he shall resign (either from the Committee or from the Chairmanship thereof), die, or be removed as herein provided. In case at any time any member of the Committee shall die, resign, refuse or be unable to act, the vacancy thereby caused shall be filled by the vote of the majority of the remaining members of the Committee. Any member of the Committee may be removed at any time by the vote of all the other members, and any member of the Committee may resign by giving notice of his resignation to the Secretary of the Committee and to the Depository. The Committee may settle any account or transaction with such removed or resigning member and give him full release and discharge upon such resignation or removal. The Committee, as at any time constituted, and disregarding any vacancy, shall enjoy all the rights, powers, interests and immunities of the Committee as originally constituted. In so far as appropriate to that purpose, the title to deposited bonds and coupons upon the election of the Committee to take such title and to any other property held by the Committee shall (subject to the power of the majority of the Committee to make disposition thereof) be in the nature of a joint tenancy and not a tenancy in common, with survivorship among members of the Committee

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

upon the death, resignation or removal of any of them. If requested by the Committee, however, a member shall, upon his resignation or removal, execute instruments releasing to the Committee all his right, title and interest in the property held hereunder. Except where in this Agreement it is expressly stated that powers of or actions by the Committee shall be exercised or taken by a greater proportion or number of members thereof, the Committee may exercise any of the powers or take any action under this Agreement with the assent of a majority of the Committee, which assent may be expressed at a meeting of the Committee, by vote or by resolution of a majority of the members of the Committee, or without a meeting by an instrument or separate concurrent instruments in writing signed by a majority of the members of the Committee. The Committee may adopt its own rules of procedure respecting the taking of Committee action, and, as respects any order given or action taken by the Committee, neither the Depository, Depositors nor third persons need inquire as to whether such rules were observed, or as to whether the minority of the Committee were notified or apprised of the passing or contemplated passing of any order or the taking or contemplated taking of any action. The membership of the Committee may, by unanimous vote of all the then members, be increased or decreased to such number from time to time as the Committee may decide, and in

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

case of increase the additional members shall be appointed by the Committee or a majority thereof. Notice of all changes in the addresses or in the membership of the Committee and in the offices of Chairman and Secretary of the Committee shall be filed with the Depositary by the Secretary and such filing shall bind all parties hereto. Any member of the Committee may vote or act by proxy (which proxy may, but need not be, another member of the Committee and may be appointed in writing or by telegraph, radio or cable) and the vote or act of such proxy shall be as effective as the vote or act of the member appointing such proxy.

Section 2. The Committee may select, employ and dismiss in and about the exercise of any of its powers, a secretary and an assistant secretary or assistant secretaries (who may, but need not be, members of the Committee) and such other officers, counsel, engineers, accountants, appraisers, superintendents, laborers, agents or employees in such manner and at such times as it may deem advisable. The Secretary hereby nominated, as set forth in Article X hereof, shall continue as such until his resignation, death, or removal by the Committee.

The Committee may hold its meetings at such times and places and upon such notice as it may at any time determine and establish by vote, resolution or otherwise. The Committee shall keep and maintain a record of its proceedings and actions in such form as it shall determine.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

Section 3. The Committee is authorized and empowered to construe this Agreement and its construction made in good faith shall be conclusive and final upon all of the parties hereto. The Committee may remedy defects and supply omissions in this Agreement and may make such modifications as in its judgment may be deemed necessary or proper to carry out the same properly and effectively, and its judgment as to expediency or necessity shall be final.

Section 4. Unless this Agreement shall be terminated within a period of one (1) year from the date hereof, the members of the Committee shall be entitled to receive for the usual and ordinary services of the Committee compensation aggregating for all of the members of the Committee an amount not exceeding one-half of one per cent of the principal amount of the deposited bonds. The Committee shall be entitled to be reimbursed and indemnified for its compensation and for all advances made by and/or to the Committee and/or for all expenses, indebtedness, obligations or liabilities incurred by it or by its counsel, officers, agents, servants, attorneys and representatives in carrying out the powers and duties hereby vested in the Committee, including any stamp or transfer taxes levied or imposed by any governmental authority, by reason of the deposit, sale, transfer or assignment of bonds or any other securities issued in pursuance of any plan adopted by the Committee.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

The Committee shall be entitled to hold and resort to the deposited bonds and/or coupons and any property which it may purchase, acquire or receive and which may come into its hands, for the compensation, disbursements and expenses of the Committee and of the members thereof, (including the compensation and expenses of the Depositary and of such counsel, attorneys, secretaries, managers, experts, engineers, accountants, appraisers, superintendents, mechanics, operators, laborers, agents and employees as it and/or the Depositary may employ) in accordance with the provisions hereinbefore set forth, and for any and all indebtedness, obligations or liabilities incurred by the Committee. Holders of Certificates shall not be personally liable for such compensation, charges and expenses or for such indebtedness, obligations or liabilities, and there shall be no personal liability on the part of such holders for any action taken or expenses incurred by the Committee, but the Committee shall look solely to the security of the deposited bonds and/or coupons and all property subject hereto for the payment of such compensation, charges, expenses, indebtedness, obligations and/or liabilities.

Section 5. The Committee as a committee, the members thereof as individuals, any firm or company with which any of the members of the Committee shall be associated, the Depositary, or any of its agents or officers, either separately or with each other, may deposit bonds and/or coupons under

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

this Agreement, and shall have the same rights and be subject to the same liabilities in respect thereto as other Depositors; and/or may become pecuniarily interested (as pledgee, purchaser, seller, underwriters, or otherwise) in the property, securities or matters referred to in or connected with this Agreement or with any plan and/or agreement of reorganization or readjustment which the Committee and/or the Depositors may adopt or approve as hereinafter provided, or otherwise, or in any property, securities or matters in or with which the Mortgagor may be directly or indirectly interested or concerned, and in this regard the Committee as a committee, the members thereof as individuals, any firm or company with which any of the members of the Committee shall be associated, and the Depositary and its officers and agents, shall be as free to act as if this Agreement had not been entered into. Any member of the Committee may become an officer, director, stockholder or employee of any corporation, trust or association organized pursuant to the provisions of this Agreement; and the Depositary and/or any member of the Committee may be appointed or act as trustee under any mortgage, indenture or agreement created or entered into in connection with any plan of reorganization or readjustment adopted pursuant to the provisions of this Agreement or otherwise, and may act as transfer agent, registrar or otherwise, in any manner in respect to any securities

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

issued pursuant to the provisions of any plan of reorganization or readjustment so adopted.

The Committee shall have and it hereby is given the right to co-operate with such other committees as are or may hereafter be organized to represent other interests connected with or pertaining to the Trust Property or the Mortgagor, and the said Committee shall have the right to act (by its Chairman or by any member of the Committee or other representative or representatives appointed by it) in conjunction with said Committees. The members of the Committee or any of them may become members of and/or may constitute any such other Committee.

Article III.

Powers of the Committee.

Section 1. The Depositors, severally and respectively, do hereby agree that all bonds deposited by them with the Depositary hereunder shall be held and disposed of by the Committee under and subject to the terms and conditions of this Agreement, including the following:

Title to bonds deposited hereunder shall not pass to the Committee or its nominee or nominees, and the endorsement or assignment or transfer of such bonds shall not become effective for such purpose unless and until the Committee shall cause to be filed with the Depositary for such bonds a certified copy of a resolution adopted by the Com-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

mittee determining to accept the transfer to it or its nominee or nominees of the deposited bonds described or referred to in such resolution, and until the Committee shall have caused, on behalf of the Depositors, owners thereof, the necessary transfer tax stamps to be affixed to the transfer or assignment of the deposited bonds described or referred to in such resolution, and cancelled. Immediately upon the filing, as aforesaid, of a certified copy of such resolution and the affixing and cancellation of such stamps, the title to each and every deposited bond described or referred to in such resolution shall pass to and vest in the Committee or its nominee or nominees. The Committee may at any time or times cause the title to any or all of such deposited bonds to pass to and vest in the Committee or its nominee or nominees as hereinbefore provided; and the Committee or its nominee or nominees shall thereupon be vested with the legal and equitable title to such bonds to the same extent as if it or they were the absolute owner or owners thereof, and the Depositors hereby consent to the assignment and transfer thereof to the Committee, its successors and assigns, or its nominee or nominees. Transfer tax stamps upon deposited bonds required because of any transfer of title to the Committee or to its nominee or nominees shall be an expense of the Committee.

Each Depositor agrees to execute and deliver to the Committee or to its nominee or nominees at

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

any time, upon its request, any and all instruments of transfer, assignment, powers of attorney and other instruments, necessary or desirable in the opinion of the Committee to vest or confirm in it or its nominee or nominees the title to said bonds and to enable it fully to carry out this Agreement. All deposited bonds, whether or not title thereto shall have passed to the Committee or its nominee or nominees, shall be held by the Depositary for the account, under the control and at the order of the Committee, subject only to the terms and conditions hereof; and the Committee or its nominee or nominees may use or cause to be transferred and delivered or surrender any such bonds and receive, or cause to be delivered in exchange therefor, new bonds and/or cash and/or securities, in accordance with any Plan adopted or approved by the Committee in the manner hereinafter provided, or any modified or substituted plan. Until the Committee shall have elected to take title to the deposited bonds as herein provided, the Depositors further constitute the Committee as now or at any time hereafter constituted their only and exclusive attorneys and agents for the purpose of carrying out this Deposit Agreement and constitute and appoint the Committee, the lawful attorneys of them and each of them, irrevocably, to execute in their behalf such instruments in writing and to do all such acts and things as to said Committee may seem proper to protect or promote the rights of the

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

Depositors. Any and all action of the Committee with respect to deposited bonds, prior to the date on which the Committee elects to take title to the deposited bonds, shall be as the irrevocable agent and attorney-in-fact of the Depositors.

The Committee shall have and may exercise, in its discretion, and either prior to or subsequent to the election of the Committee to take title to deposited bonds and coupons, all the rights and powers of the respective owners or holders of said bonds and/or coupons deposited hereunder; and without in any manner limiting the other provisions hereof and the power and authority vested in the Committee through the sale and transfer to it of the deposited bonds and/or coupons, it is further agreed by the Depositors that the Committee shall be fully authorized, in its discretion:

(a) To attend either in person or by proxy all meetings of bondholders or creditors of the Mortgagor, and as the holders and owners of said bonds and/or coupons or as the agent and attorney-in-fact of the Depositors, as the case may be, to vote upon all questions which may arise at such meetings, and also as such holders and owners to consent either in writing or otherwise in respect to any and all matters;

(b) To consent or agree to or to make any changes, modifications, alterations or amendments in any or all of the terms, covenants or provisions of said Trust Indenture, as may to the Committee

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

seem advisable, and to execute and/or assent to the execution of all instruments convenient or necessary thereto; and to consent to and/or to extend the time of payment of any of such bonds and/or coupons for such period or periods as the Committee may deem advisable;

(c) To elect to have the principal of the bonds declared due and payable forthwith or otherwise and to request the Trustee under said Trust Indenture so to do, and to withdraw any such election; to declare said bonds due and to withdraw any such declaration, all as provided in said Trust Indenture; and to waive or suspend any default in the bonds and/or coupons or under said Trust Indenture or in any other bonds, notes, securities or claims at any time held hereunder; and to ratify any action heretofore or hereafter taken by the Trustee under said Trust Indenture; and to pay or consent to the payment of said bonds and/or coupons and/or of any claims against the Mortgagor whether or not such claims are secured by a lien prior to said bonds and/or coupons; and to make such requests upon or give such directions to the Trustee under the said Trust Indenture as are expressly or impliedly provided for therein;

(d) To enter upon and to take possession of the Trust Property or any part thereof and to lease all or any part thereof upon such terms and for such periods as the Committee, in its absolute discretion, may determine, and/or to operate

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

and use the same, and for the purposes of said operation to employ and discharge and direct all managers, operators, agents, laborers, and employees, and/or to make all contracts or agreements, whether in respect of the purchase of supplies, material or equipment, or otherwise, as the Committee shall deem best for such operation; to take such possession and/or engage in such operation as the agent of the Trustee, to request the Trustee to take such possession and/or engage in such operation and to exercise all other power and authority granted in said Trust Indenture; to request the Trustee in writing, with or without entry, either personally or by attorney, to sell all or any part of the Trust Property; to institute, prosecute or defend, or to intervene in or become a party to, or direct the Trustee under said Trust Indenture to institute, prosecute or defend, or to intervene in or become party to, any suit or proceedings for the foreclosure of said Trust Indenture, or otherwise, and to exercise all other powers and pursue all other remedies provided in said Trust Indenture and/or provided by law, among other things to institute proceedings for foreclosure, sale by Trustee under power of sale, or any special foreclosure, in accordance with the laws of the State of California, or request or direct the Trustee to so do, and to that end, for and on behalf of each and all of the Depositors, to waive a deficiency decree and to so state in the Bill of Equity, Complaint, Petition or other pleading,

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

that the Depositors are willing to take and accept the property conveyed, mortgaged and pledged by said Trust Indenture in full satisfaction of the indebtedness secured by said Trust Indenture or to authorize the Trustee to do so; and to apply for and procure, or direct the Trustee under said Trust Indenture to apply for and procure the appointment of a receiver or receivers for all or any part of the Trust Property, or the dismissal of any such receiver or receivers, or the substitution of any such receiver or receivers; to consent to the issuance of receivers' certificates relating to said Trust Property and/or to any other property held by or on behalf of the Committee upon such terms and conditions and with such liens as the Committee may deem necessary or advisable, and to oppose the issuance of such receivers' certificates; to remove or take part in the removal or concur in the resignation of the Trustee and to appoint or take part in appointing its successor or successors;

(e) To institute or cause to be taken or instituted or to intervene in or become a party to or exercise control over such suits, actions, defenses or proceedings, at law, in equity or otherwise, and to give such directions, execute such papers and do such acts, whether under or for or in connection with the foreclosure of said Trust Indenture, or otherwise, as the Committee shall deem judicious or proper in order to protect the security provided by said Trust Indenture, or to procure the payment of

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

the deposited bonds and/or coupons with interest thereon as therein provided; to deposit or cause the Depository to deposit any or all of said bonds and/or coupons as exhibits or evidence in any suits, actions or proceedings as required by law, or the ruling of any court, master in chancery or commissioner; and to represent, bind and act for the Depositors in any and all such matters as fully and completely as the Depositors themselves might do;

(f) To institute or cause to be taken or instituted or to intervene in or become a party to such actions or proceedings, enforcing or attempting to enforce any guaranty or guaranties of the payment of the principal of and/or interest on said bonds and/or any other indebtedness secured by said Trust Indenture and/or of the observance or performance of any covenants, agreements or conditions contained in said bonds and/or Trust Indenture or otherwise;

(g) To consent and agree to the sale of part or all of the Trust Property (without regard to whether such sale may or may not be pursuant to judicial or legal proceedings) by the Mortgagor, by the Trustee, or by any receivers of the Trust Property, or of any portion or portions of the property now under said Trust Indenture, free and clear from the lien of said Trust Indenture, at such price or prices and upon such terms and conditions as may to the Committee in its discretion seem best, and to consent to the release by the Trustee under

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

said Trust Indenture of any and all of the property covered by said Trust Indenture from the lien thereof and for such consideration as the Committee may fix, with or without compliance with the provisions, if any, contained in said Trust Indenture relative to the release by the Trustee of property covered thereby;

(h) To apply from time to time any and all moneys in the hands of the Committee in the following manner: First, to the discharge or payment of any advances for and costs and expenses of any judicial, legal or other proceedings, and costs, expenses, compensation, or fees of any receivers of the property subject to said Trust Indenture, and of the Trustee under the said Trust Indenture, and of their counsel; the furnishing of indemnity to said Trustee; the payment and/or purchase of receivers' certificates; the acquisition of property and payment of the costs and expenses of operating, rehabilitating and/or improving such property and the Trust Property; and the payment of all indebtedness, obligations, liabilities, charges and expenses and the compensation of the Committee and/or the Depositary and of their counsel, and for any other purposes permitted under the provisions of this Agreement, which the Committee shall agree shall be paid; and Second, to the pro rata payment of the matured and unpaid interest coupons, with interest thereon at the rate therein specified, and the payment of the principal of and accrued inter-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

est on all the said bonds then outstanding, without preference of interest over principal or principal over interest; Provided, however, the Committee may alter or vary the order of distribution aforesaid, if required by the terms of said Trust Indenture or for other reasons in the opinion of the Committee requiring such variance;

(i) To consent or agree to the making of any notation or memorandum on the bonds and/or coupons deposited hereunder, evidencing any partial payment thereon or any release of property from the lien of said Trust Indenture, or any other thing done or consented to by said Committee, or any agreement made in regard to such partial payment, release or other thing as to the Committee may seem proper; and in the event of receiving interest on any of the deposited bonds the Committee is authorized to surrender the coupons representing interest thus paid, and may in respect of the collection of such interest execute and deliver all certificates and other instruments and do all further acts necessary or appropriate pursuant to the requirements of the Federal laws and/or any State laws governing income or other taxes;

(j) To do or to be done whatever (including the execution and delivery of proper instruments) the Committee in its sole discretion may deem expedient, necessary or proper to preserve, protect, guard, secure, promote or enforce the rights and interests of the Depositors and in such manner and

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

upon such terms as the Committee shall deem expedient; to pay and discharge any or all prior liens (including taxes and assessments), whether the same now exist or hereafter arise, on the property of the Mortgagor, or any part thereof, subject to said Trust Indenture, and/or to liquidate, compromise, settle or discharge any such prior liens or liens and/or taxes and assessments by conveyance of any of the Mortgagor's property to any person, firm or corporation or taxing authority, with or without consideration, or to permit any such property to revert to such taxing authority; and to make any settlement or adjustment with any holder of bonds and/or coupons not depositing the same under this Agreement for the purpose of securing his consent to any action or nonaction contemplated by the Committee or the deposit of the bonds and/or coupons of such holder under this Agreement.

(k) To demand, collect and receipt for all amounts that may be due or owing upon or in respect to the deposited bonds and/or coupons, whether for principal or for interest, or otherwise; and to take or institute or cause to be taken or instituted all such suits, actions or proceedings, whether legal, equitable, in bankruptcy or otherwise, for the recovery of any property or the amount due upon any bonds and/or coupons or other obligations held or owned by said Committee; and to assent to any composition in bankruptcy offered by or on behalf of the Mortgagor or any per-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

son having any interest in the Trust Property or any other property acquired or sought to be acquired by the Committee; and to enforce payment of the deposited bonds and/or coupons by proving the same in bankruptcy or otherwise;

(1) To do whatever in the judgment of the Committee may be deemed expedient to promote or procure the sale or exchange and/or purchase of all or any part of the property of the Mortgagor, without regard to whether such property is or is not included in the lien of said Trust Indenture and without regard to whether said sale, exchange and/or purchase is or is not pursuant to judicial proceedings and/or foreclosure and/or Trustee's sale or otherwise; to dissolve or cause the Mortgagor to be dissolved and to purchase such property (the Committee, however, not being obligated to make any such purchase at receiver's sale or other sale incident to said dissolution or winding up of the affairs of the Mortgagor; at any time to purchase or cause to be purchased in its behalf or for its account said property of the Mortgagor or any part thereof, at such prices and on such terms as it may deem expedient so to acquire the same by foreclosure and/or Trustee's sale, or otherwise, and in connection therewith to waive any deficiency judgment (the Committee, however, not being bound to make any such purchase or acquisition), and to purchase, or provide for the purchase of, or acquire, or provide for the acquisition of,

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

any such property or any lien thereon or obligations secured by lien thereon or any other property, or thing of use in the judgment of the Committee in promoting the interests of the Depositors; to purchase or provide for the purchase or extension of the maturity of any obligations secured by prior liens upon the property of the Mortgagor or any part thereof covered by said Trust Indenture or to consent to the issuance of new securities secured by a lien on the Trust Property, or any part thereof, prior to the lien of the Trust Indenture herein referred to in an amount sufficient to fund any indebtedness, including taxes and assessments, having or constituting a lien prior to said Trust Indenture or to pay any such prior lien or indebtedness, and sufficient to provide for all expenses (including attorneys' fees) in connection with the issuance of such new securities; and, in the event of a purchase of any property and/or prior lien obligations, the Committee may apply all or any of the deposited bonds and/or coupons and/or any purchased property in payment or in part payment of the purchase price thereof, or may pledge, mortgage or sell all or any part of the purchased property and all or any part of the deposited bonds and/or coupons and any other property, securities, bonds and/or coupons acquired by or on behalf of the Committee, for the purpose of procuring funds for the same and/or such funds as may be necessary to discharge prior liens on the property purchased, or to pay

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

the expenses of sale or of the Committee and/or to pay or purchase any receivers' certificates which may be issued in any legal proceedings, and/or for such other purposes as the Committee in its discretion may deem advisable for the best interests of the Depositors;

To make or secure such indemnity and protection to any Title Company as may be required by such company in connection with the issuance of any guaranty or certificate of title or policy of title insurance covering the Trust Property or other property acquired by the Committee, and generally to furnish such indemnity to such persons as the Coupon may deem necessary, and to mortgage, pledge, or sell any of the bonds and/or coupons deposited hereunder or property acquired by or on behalf of the Committee for such purpose; and to pay any premium or charge for the issuance of any title guaranty policy or policies;

(m) To make or secure such indemnity and protection to the Trustee under said Trust Indenture as the Committee may approve against any liability by reason of any action or thing which said Trustee may take or do at the request of the Committee, and to pay any compensation, charges, expenses or disbursements of said Trustee or of the Committee or of the Depositary, and for the purposes aforesaid to pledge, mortgage, or sell any or all of the deposited bonds and/or coupons and any and all se-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

curities, bonds and/or coupons or property acquired by or on behalf of the Committee;

(n) To exercise, assert and enforce as the holders and owners of deposited bonds or as agent and attorney-in-fact of such owners, as the case may be, by legal proceedings or otherwise, in its uncontrolled discretion, any powers vested in or conferred upon by the owners and holders of said bonds and coupons by the terms thereof or under the terms of said Trust Indenture or otherwise, and in general to do such acts as the Committee in its uncontrolled discretion may deem judicious or proper in order to carry out fully and effectively the purposes of this Agreement;

(o) To borrow any sum or sums of money from any person, firms or corporations whatsoever (including the Depositary or any of the members of the Committee individually, or the firms or corporations of which they or any of them may be members, officers, directors or stockholders) at any time or times and for any purpose of this Agreement (including the payment of any compensation, expenses, obligations and liabilities of the Committee) and for the purpose of preserving, protecting, improving and operating the property subject to said Trust Indenture and/or any other property held by the Committee and the integrity of the business relating thereto, and to give any and all bonds of indemnity and other bonds; and for the moneys so borrowed the Committee may give promissory notes

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

therefor, binding the bonds and/or coupons and/or Trust Property and/or other property held by the Depositary or the Committee hereunder, but not the Committee or its members, the Depositary or the Depositors personally; and as security for the payment of any moneys so borrowed and for the performance of the provisions of any such bonds and/or notes and of any obligations of the Committee to charge, by pledge, mortgage and/or otherwise, the deposited bonds and coupons, or any of them, and the Trust Property or any other property purchased, acquired or held by the Committee or any part thereof; and any person or corporation from whom the Committee shall borrow money, as hereinabove provided, may rely conclusively upon the certificate of the Committee executed by the Secretary of the Committee as to the purposes for which any such moneys are borrowed, and no such person or corporation shall be required to see to the application of the moneys so borrowed, or any part thereof. The Committee may direct the Depositary to hold the deposited bonds and coupons and other property, or any designated part thereof, as security for the repayment of any moneys borrowed or to be borrowed by the Committee as hereinabove provided, in which case such bonds and coupons and other property so designated shall be, and shall be held by the Depositary as, security for such loans with the same effect as if they were actually de-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

posited with the person or corporation making such loans as security for the payment thereof;

(p) To negotiate and contract with any persons, firms and corporations for obtaining or for granting powers, rights or facilities, exchanges of property, or any other right which may be deemed necessary or desirable to obtain or grant, and to make contracts therefor, and generally to make and ratify such purchases, contracts, stipulations or arrangements as in its opinion will operate directly or indirectly to aid in the preservation, improvement, development, or protection of the property subject to said Trust Indenture or of any property which the Committee shall acquire or shall have contracted to acquire;

(q) To purchase any securities at such price or prices as it may deem advisable; to exchange the deposited bonds and/or coupons for new securities of the Mortgagor or securities of any other person, corporation, trust or association, which new securities or securities shall bear such date, mature on such date or dates, bear such rate of interest or dividends, and contain such terms, provisions and conditions as the Committee in its uncontrolled discretion may deem judicious or proper, such new securities or securities to be secured or unsecured, and may consist of bonds, notes, debentures and/or stock on such terms as the Committee in its uncontrolled discretion may deem judicious or proper.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

(r) To rescind, alter, modify, enlarge or restrict any contract or agreement entered into, or withdraw any consent given or election made, or dismiss any action or proceedings commenced or caused to be commenced by the Committee under any of the provisions hereof.

(s) To sell the deposited bonds for such price and on such terms as it may deem advisable, provided that no such sale shall be made unless all of the deposited bonds are sold, nor unless such sale and the price and terms thereof shall first have been approved by the written consents of the holders of at least 90% of the deposited bonds filed with the Depositary.

Section 2. No power or authority in this Agreement or in any article, section or sub-section thereof conferred upon or granted to the Committee or the Depositary is intended to be exclusive of any other power or authority (whether or not granted in the same article, section or sub-section) but each and every such power and authority shall be cumulative and shall be in addition to every other power or authority given in this Agreement. No power or authority in this Agreement granted shall be exhausted or impaired by the exercise thereof, but may be exercised again from time to time as occasion arises. Any power or authority in this Agreement granted may in point of time be exercised without regard to the order in which the statement of such power or authority may occur in this Agreement.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

Particularly may all powers or authorities granted in this Agreement be exercised before or after any sale or purchase of any or all of the Trust Property or any property of the Mortgagor or other person or corporation, or the acquisition thereof on foreclosure, Trustee's sale (or otherwise), and before or after or irrespective of the adoption or approval of any plan and agreement of reorganization or readjustment. It is the intention to confer upon the Committee all powers which it may deem necessary or expedient in or towards the furtherance of the general purposes of this Agreement, although such powers be of a character not contemplated at the time of the execution hereof.

In respect of any power granted herein the Committee shall be deemed to have all supplemental powers whereby the granted powers are to be exercised. Without in any manner limiting such supplemental powers, the Committee shall have the power to make investigations, inspections, and inquiries; to consult counsel, experts, and advisers; to make reports to Depositors; to sign, execute and deliver letters, documents, telegrams, notices, requests, covenants, deeds, grants, assignments, indentures, mortgages, deeds of trust, bonds, notes, pledges, leases, releases, and so forth; to sue or defend in courts, whether at law or in equity, or bankruptcy or of claims, or before committees, councils, or commissions or any other governmental agency or agencies; to obtain patents, licenses, trade-marks

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

and leases; and to do all other things which the Committee regards as permitting the more facile, convenient, speedy, or satisfactory exercise of any or all of the powers granted herein.

Article IV.

Plan of Reorganization or Readjustment.

Section 1. The Committee shall have power (but shall not be obligated), either before or after any sale of the Trust Property or acquisition thereof by the Trustee or the Committee on foreclosure, Trustee's sale or otherwise, to make, enter into, or become a party to (either alone or in conjunction with other bondholders, creditors, stockholders, or committees representing them, or otherwise) a plan or agreement of reorganization or readjustment of the property and/or affairs of the Mortgagor, containing such terms and conditions as the Committee may, in its sole discretion, deem proper or advisable, or the Committee may approve and adopt any such plan or agreement though not prepared by it. Such plan or agreement may constitute managers of the reorganization or readjustment under it and provide for their compensation and expenses, and the members of the Committee, or any of them, may act as such managers or may be members of the Committee constituted by such plan.

Such plan or agreement of reorganization or readjustment may be effected (but need not be) by a merger or consolidation of the Mortgagor with any other corporation or corporations, trust or

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

trusts, of may be effected by a sale and/or the transfer of the Trust Property or other property of the Mortgagor to any person or persons, corporation or corporations, trust or trusts, or by an exchange of the deposited bonds and/or coupons for other bonds, securities and/or stocks.

Upon the approval and/or adoption of any such plan of reorganization or readjustment by the Committee under the provisions of this Section, copies thereof shall be filed with the Depository and thereupon a brief notice of the fact of such adoption and filing and a copy of such plan shall be mailed by the Secretary of the Committee in an envelope with postage prepaid to each of the Depositors, addressed to them at the addresses which they shall have last given in writing to the Depository, and the mailing of such notice shall be deemed to be and shall be sufficient and conclusive evidence of notice to the Depositors of the approval and adoption of any such plan or agreement by the Committee. In the event that any such plan of reorganization or readjustment shall be so approved and/or adopted, and copies thereof filed with the Depository and notice thereof given as above provided, prior to a sale of the Trust Property (whether in foreclosure proceedings, at a Trustee's sale or by any other legal proceedings), any Depositor may, within twenty (20) days after the placing of such envelope in the United States mails in the City of San Francisco, California, or at such other place

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

in the United States as said Secretary may select, file with the Depositary a notice, in writing, that such Depositor dissents from such plan or agreement, and may withdraw from deposit bonds and/or coupons in the aggregate principal amount represented by the Certificates held by him or anything then held by the Depositary and/or the Committee in lieu thereof, upon surrender of his Certificate properly endorsed in blank and upon payment of such amount as the Committee, in its absolute discretion, may fix as his proportion of the reasonable compensation, charges and expenses of the Committee, including, among other things, attorneys' fees, and/or of any indebtedness, liabilities and obligations incurred by the Committee and/or of any advances which may have been made by or to the Committee for purposes other than its compensation, charges and expenses, in which event the withdrawing Certificate holder shall receive such evidence of interest in such advances as the Committee, in its absolute discretion, may prescribe. The exercise of such right of withdrawal shall release and discharge the Committee and the Depositary and their officers, agents and attorneys from any and all liability at law or in equity, in tort or in contract, known or unknown, fixed or contingent, or of any nature or character whatsoever, as to each such withdrawing Depositor. Such plan or agreement shall be binding upon all Depositors who shall not have filed dissent and made such withdrawal within the

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

period and in the manner above provided, their heirs, legal representatives, successors and assigns, all of whom shall be conclusively deemed to have assented thereto, whether they shall have received actual notice thereof or not, and shall be irrevocably bound and concluded by the same. In the event that any such plan of reorganization or readjustment shall be so approved and/or adopted, and copies thereof filed with the Depositary and notice thereof given as above provided, after a sale of the Trust Property (whether in foreclosure proceedings, at a Trustee's sale or by any other legal proceedings), any Depositor may thereafter signify his dissent to such plan by filing written notice of such dissent with the Depositary within twenty (20) days after the placing of such envelope in the United States mails in the City of San Francisco, California, or at such other place in the United States as said Secretary may select. If the Depositors of twenty-five per cent (25%) in principal amount of bonds deposited hereunder shall so signify their dissent within such 20-day period, such plan shall be deemed to be rejected, and the Committee shall have no power to proceed under such plan, but may formulate and adopt an amended plan or a new plan, or may proceed to exercise the powers conferred upon the Committee in Article III hereof, or any of such powers, without a plan. In the event that the holders of less than twenty-five per cent (25%) in principal amount of

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

bonds deposited hereunder shall so signify their dissent within such 20-day period, such depositing bondholders as shall not have so signified their dissent within such period shall be deemed and treated as dissenting to said plan, and all of the Depositors shall be bound by said plan, and the Committee will thereupon be empowered and authorized by all of the depositing bondholders to carry out said plan.

The Committee is hereby authorized and empowered (whether before or after the adoption or submission of any plan or agreement) to adopt, approve or accept any amendment to or modification of any plan or agreement so formulated, adopted, accepted or approved, or supplement thereto, or to adopt, approve or accept a new plan or agreement in lieu thereof. Copies of such amendment, modification or supplement thereto or of any such new plan or agreement shall be filed, notice thereof shall be given and modifications therefrom may be effected, all upon the same terms and conditions, and with the same effect in these and all other respects as herein provided with reference to the original plan or agreement; provided, however, that if in the opinion of the Committee, which shall be conclusive and binding upon the Depositors, such amendment, modification or supplement does not materially affect the rights of the Depositors hereunder, no notice of the adoption, approval or acceptance thereof shall be necessary, and upon the filing with the Depositary of copies of such **modi-**

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

fication, amendment or supplement and of the approval thereof by the Committee, the same shall become binding upon all the Depositors.

The Committee is hereby fully authorized and empowered in its sole and absolute discretion, at such times as it may deem expedient, subsequent to the election of the Committee to take title to the deposited bonds and coupons as herein provided, to declare any such plan or agreement or modified plan or agreement operative and to carry out any such plan or agreement or modified plan or agreement on the part of all the Depositors who shall not dissent in the manner hereinbefore indicated. Notwithstanding that the Committee has approved and adopted any plan and/or agreement or modified plan and/or agreement of reorganization, or readjustment, and has submitted the same to the Depositors, and the said Depositors shall have been conclusively deemed to have assented thereto as herein provided, the Committee may, nevertheless, without submission to the Depositors of the question of abandonment of such plan and/or agreement, or modified plan and/or agreement, abandon such plan or agreement, or any modified plan or agreement, and terminate the same. In case the Committee shall finally abandon a plan or agreement or a modified plan or agreement which may have been adopted, and shall not desire to substitute any other plan or agreement therefor, the bonds and coupons deposited or held hereunder, or their pro-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

ceeds, substitutes or avails then under the control of the Committee, shall be delivered to the several Depositors or their transferees in amounts representing their respective interests, upon surrender of their respective Certificates properly endorsed in blank, and the payment of such charges, expenses, indebtedness, liabilities, and obligations, if any, as shall have been paid or incurred by the Committee and/or such advances as may have been made by or to the Committee, and the reasonable compensation of the Committee, and the Committee shall have full and absolute power to determine and to apportion the share of such charges, expenses, indebtedness, liabilities, obligations, advances and compensation to be borne by each Depositor.

Section 2. The title to any securities, property or moneys acquired and/or to be acquired by the Committee prior to and/or upon and/or subsequent to the consummation of a plan or agreement of reorganization or readjustment in accordance with the provisions of this Article IV, may, in the discretion of the Committee, be vested in a corporation to be organized by the Committee, or may be vested in a trustee or trustees (who may, but need not be, a member or members of the Committee), or the title to such securities, property or moneys may be held in such other manner as the Committee may determine. The Committee, in its discretion, may distribute stock, securities and/or certificates of beneficial interest of such corporation, trust and/

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

or trustee or trustees to the Depositors pro rata to their several and respective bond and coupon holdings as evidenced by the Certificates therefor; or the Committee may, in its discretion, hold the said securities, property or moneys and at such time or times as it may deem advisable sell or convert the said property or securities, or any part thereof, into money, and distribute the proceeds thereof, and the moneys, if any, theretofore held, to the Depositors pro rata as aforesaid. Before any such distribution, the charges, expenses and obligations of the Committee, and its reasonable compensation, shall be provided for. After any such distribution, the Committee shall thereupon be relieved from all liability hereunder. The accounts kept and the distribution made by the Committee shall be final as to calculation and amount.

As long as the Committee shall hold any property or securities the Committee may manage, control, vote upon or otherwise deal with the same in such manner as it may deem desirable and may enter into agreements providing for the voting of any stock held by the Committee, or may distribute voting trust certificates to the Depositors in lieu of any such stock.

Notwithstanding the provisions of this Article IV, the Committee may exercise any or all of the rights and powers conferred upon it by the provisions of Article III hereof, whether or not it shall make, enter into or submit to the Depositors any

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

plan or agreement of reorganization or readjustment as permitted by the provisions of this Article IV.

Article V.

Meetings of Depositors.

Any matter or question not herein provided for, or any matter or question suggested by the Committee, or any amendment of the terms or provisions of this Agreement, may in the sole discretion of the Committee be submitted to the Depositors at a meeting to be held at any place within the State of California, and called by letter placed in the United States postoffice in San Francisco, California, or at such other place in the United States as the Secretary may select, in an envelope with postage prepaid, at least ten (10) days before the day of such meeting addressed to each Depositor at the last known postoffice address of each Depositor, as shown by the addresses on file with the Depository. Any such matter, question, or amendment so submitted shall be determined or adopted by a vote of said Depositors, holding Certificates issued hereunder representing a majority in principal amount of the bonds deposited hereunder, present at such meeting or at any adjournment thereof, in person or by proxy (which proxy may, but need not be, the Committee or a member thereof), and such determination or amendment shall be binding and conclusive upon all parties hereto; but no such amendment shall change or alter the rights, duties, obligations or liabilities of the Depository or the

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

Committee, without their respective consents, in writing. Such meeting may be called at any time in the manner above specified, by the Committee or by Depositors holding Certificates representing at least twenty-five per cent (25%) in principal amount of the bonds deposited hereunder. The procedure of any such meeting of Depositors shall be determined by the Committee, except as herein otherwise provided.

Article VI.

Records of the Committee.

The Committee shall keep books showing its receipts and disbursements, and a record of its proceedings, and upon the termination of its duties, accounts of its expenses and disbursements shall be filed with the Depositary, and thereupon the Committee, and each member thereof, shall be discharged from all its or his duties, liabilities or obligations as to all Depositors hereunder. The Committee shall not be required to make any report or accounting other than said final account.

Article VII.

Termination of Agreement.

The Committee may, at any time (whether before or after the adoption or submission of any plan or agreement), terminate this Agreement whenever it shall think best so to do, by giving notice of such termination to each of the Depositors, by letter, duly mailed, with postage prepaid, ten days before such termination, addressed to the last known post-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

office address of each Depositor, as shown by the books of the Depositary; and this agreement shall be terminated whenever the termination thereof shall be requested in writing or writings filed with the Depositary by Depositors holding Certificates representing eighty per cent (80%) in principal amount of the bonds deposited hereunder, but only on such terms as shall satisfy all obligations of the Committee; and this Agreement and all trusts created hereby or hereunder shall, unless sooner terminated as herein provided, terminate on April 15, 1945. The termination of this Agreement shall not affect any provisions, assents, acts, agreements or proceedings, whether of a legal nature or otherwise than the Committee has made, done or instituted, prior to such termination. In event of such termination of this Agreement, the Depositors, upon the payment of the reasonable compensation, charges, costs, expenses, disbursements and outlays of the Committee and of the Depositary and upon reimbursement and payment to the Committee and the Depositary for all indebtedness, obligations and liabilities incurred by the Committee and the Depositary, shall, upon the surrender to the Depositary of their Certificates endorsed in blank, be entitled to their pro rata share of all property, securities and cash held subject hereto, which, except as to money and property received from the sale of property now subject to said Trust Indenture, shall be disposed of and distributed in the manner hereinbefore directed.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

The Committee may as a condition precedent to any partial distribution require the presentation of Certificates for the notation thereon of such distribution.

Article VIII.

Liability of Committee and Depositary.

Section 1. Neither the Depositary nor the Committee nor any of its members shall be answerable or liable for the acts or omissions of any officer, employee, agent or attorney, appointed and selected with reasonable care, nor be under any obligation or liability not affirmatively expressed in this Agreement, nor shall any member of the Committee nor the Depositary be responsible to anyone for the acts or omissions of any other member of the Committee, or Depositary, as the case may be, and shall only be responsible at any time for his or its own actual bad faith in the discharge of his or its duties hereunder, or in the exercise of any of the powers and authority herein vested in the Committee or any member thereof or in the Depositary.

Section 2. The Committee and each member thereof and the Depositary shall always be protected and free from all liability in acting upon any bond, coupon, notice, request, consent, certificate (whether of deposit or otherwise), declaration, guaranty, affidavit, telegram, radio, cable, or other paper or document or signature believed by it or by any member of the Committee or by the Depositary, or any of them, as the case may be, to be genuine and

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

to have been signed by the proper party or parties, or by the party or parties purporting to have signed the same.

Section 3. Neither the Committee nor any member of it shall be personally liable for any act or omission of the Depositary. The Depositary shall not be liable or responsible for any act or omission of the Committee or any member thereof, and the opinion, decision, order, direction or approval of the Committee with reference to any and all business matters and things acted upon by the Committee, expressed in writing by a majority thereof, or certified to the Depositary or any other person, firm, or corporation, by the Chairman or the Secretary of the Committee to have been duly issued, made or adopted by the Committee, shall be a complete justification to the Depositary or any other person, firm, or corporation, for any action taken by such Depositary, or other person, firm, or corporation, pursuant thereto. The Depositary shall always be protected and free from all liability in acting upon the opinion of counsel employed by the Depositary (which counsel may be the counsel for the Committee).

Section 4. Neither the Committee nor the Depositary shall be responsible for the financial condition of any person, company or trust whose securities shall be accepted in exchange for the property or deposited securities of the Mortgagor.

No statement, explanation or suggestion con-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

tained in this Agreement, or in any plan adopted hereunder, or in any notice, telegram, letter or circular issued by advertisement or otherwise by the Depositary or by the Committee, is intended or is to be accepted as a representation or warranty or as a condition of deposit or assent under this Agreement or any agreement supplemental hereto. No defect or error shall release any deposit under this Agreement or affect or release any assent hereto except by the written consent of the Committee.

Section 5. The Committee and the Depositary, their officers, agents and attorneys, shall be released from all liability and accountability of every kind, character or description whatsoever by the acceptance by the holders of a majority in amount of outstanding Certificates of any property, securities, money or benefits distributed by the Committee and/or the surrender of their Certificates of Deposit, save the obligation to make delivery of a like prorata amount of property, securities, money or benefits to the other holders of Certificates upon the surrender of such Certificates; and the acceptance of such property, securities, money or benefits hereunder by any Depositor shall conclusively and finally estop him, and by a majority in amount of the Depositors shall conclusively and finally estop all the Depositors from questioning the conformity of the taking by the Committee and distribution and delivery of such property, securities, money or benefits in any particular to any of the

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

provisions of this Agreement, or any plan or agreement, or modified plan or agreement which may be adopted hereunder.

Section 6. The Depositary shall be entitled to compensation for its services in an amount to be agreed upon with the Committee, and also to reimbursement for any and all expenses and disbursements incurred hereunder.

Section 7. The Committee, or any member thereof, or its officers, agents and employees, shall not be personally liable for any debts contracted by them, or any of them, or upon any contract, agreement or other obligation entered into by them, or any of them, or for damages to persons or property incurred by them, or any of them, or for damages to persons or property of any kind whatsoever, or for salaries or non-fulfillment of contracts, and it is expressly agreed that any and all such liability or obligations shall constitute a liability or obligation solely against the property held by the Committee.

Section 8. The Depositary shall not be liable for interest on any funds at any time on deposit hereunder except such as shall be allowed by the Depositary upon similar accounts, or as shall be agreed upon at the time of any such deposit, and may treat any such funds as a general deposit.

Article IX.

Removal and Resignation of Depositary.

Section 1. The Committee shall have the power

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

to remove the Depository, and the Depository may resign and be discharged as Depository by sending written notice by registered mail, addressed to the Chairman and to the Secretary of the Committee, to their respective addresses last known to such Depository; and such resignation shall take effect upon the date specified in such resignation, which date, however, shall not be less than ten (10) days after the mailing of such notice, unless the Committee shall waive such notice and accept a shorter notice. In the event of the removal or resignation of the Depository hereunder, a successor Depository shall be appointed by written instrument (executed at least in duplicate) signed by a majority of the members of the Committee. Such successor Depository shall be a trust company or state or national bank situated in the City of San Francisco, California, having a paid-up capital of not less than \$1,000,000, if there be such a trust company or bank willing and able to act as Depository upon reasonable or customary terms. Upon such appointment being lodged with such resigning or removed Depository and with such successor Depository, the said successor Depository shall thereupon have all the powers of said resigning or removed Depository, as if originally appointed Depository hereunder, and upon the payment to said resigning or removed Depository of its compensation, fees, costs, expenses, disbursements and outlays, it shall turn over to said successor Depository, all records, bonds,

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

coupons, money, securities and property, remaining deposited hereunder, or held by it as Depository hereunder, and shall thereupon be relieved of all further liability hereunder, except for its own wilful misconduct.

Article X.

Chairman, Secretary and Assistant Secretary
of the Committee.

Gerald D. Kennedy is hereby nominated for and selected as Chairman of the Committee, and Wellington Henderson is hereby nominated for and selected as Secretary of the Committee, and they shall respectively continue to act as such officers until they shall resign or be removed as herein provided.

Article XI.

Miscellaneous.

Section 1. The words "Trust Indenture" whenever used herein, unless the context shall expressly indicate to the contrary, shall be deemed to refer to the First Mortgage of The Whitney Estate Company to American Trust Company, Trustee, dated April 15, 1928, securing an authorized issue of \$1,200,000 aggregate principal amount of First Mortgage Five and One-half Per Cent Gold Bonds of The Whitney Estate Company.

Section 2. The term "bond or bonds" whenever used herein, shall be deemed to include all bonds issued and outstanding under said Trust Indenture and all unpaid interest coupons appertaining there-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

to, whether matured or unmatured, unless such meaning is plainly inconsistent with the context hereof.

Section 3. The word "Trustee" shall be deemed to refer to American Trust Company, and any successor, as Trustee under said Trust Indenture.

Section 4. The term "Mortgagor" shall be deemed to refer to The Whitney Estate Company, a California corporation.

Section 5. The word "Secretary" shall be deemed to include any Assistant Secretary of the Committee.

Section 6. The invalidity of any one or more phrases, clauses, sentences and/or paragraphs shall not affect the remaining portions of this Agreement, or any part thereof, all of the phrases, clauses, sentences and/or paragraphs of this Agreement being inserted conditionally on their being held valid in law, and in the event that any one or more of the phrases, clauses, sentences and/or paragraphs contained herein should be invalid, this Agreement shall be construed as if such invalid phrases, clauses, sentences and/or paragraphs had not been inserted.

Section 7. This Agreement shall be construed solely as an agreement among the parties hereto, and solely affecting and relating to the Committee, the Depositors, and the Depositary, and neither the owners or holders of bonds and/or coupons not deposited or subjected to the operation of this agree-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

ment in accordance with the provisions hereof, nor any other person, firm, or corporation, shall have any rights whatsoever hereunder. This Agreement shall bind and inure to the benefit of the several parties hereto and each of them, and each and all of the survivors, heirs, executors, administrators, successors, and assigns of said parties.

Article XII.

Execution of Agreement.

Section 1. The members of the Committee by their signatures to this Agreement, signify their consent to accept and exercise such powers and authority (subject to the terms thereof) as may be conferred upon them by the terms and provisions of this Agreement. This Agreement may be executed by the members of the Committee in one or more counterparts, and all of such counterparts shall constitute the original Agreement. This Agreement shall take effect and be operative upon the Depositors hereunder, irrespective of the number of bonds and/or coupons that may be deposited hereunder. Upon this Agreement being signed by any three members of the Committee in person or by duly authorized attorneys-in-fact, the Committee shall be deemed to be constituted and this Agreement shall become effective as to the members so signing.

In Witness Whereof, the members of the Committee, as parties of the first part, have hereunto set their hands and seals, and the Depositors, as

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 1—(Continued)

parties of the second part, evidence their assent hereto by their repective deposits hereunder of said bonds and/or coupons in the manner hereinbefore provided, all as of the day and year first above written.

.....(Seal)

Lloyd D. Hirschfeld,

.....(Seal)

Gerald D. Kennedy,

.....(Seal)

Philip Paschel,

.....(Seal)

R. M. Underhill,

.....(Seal)

F. W. Wentworth,

Committee.

To evidence its acceptance of the duties of the Depositary hereunder, American Trust Company has caused this agreement to be signed in its corporate name by one of its Vice-Presidents, and its corporate seal to be hereto affixed by one of its Assistant Trust Officers.

American Trust Company,

By.....

Vice-President.

Attest:

.....

Assistant Trust Officer.

[Endorsed]: Filed 7/10/42.

(Testimony of Lloyd D. Hanford.)

Mr. Ellis: Q. This committee was formed in June; is that right, Mr. Hanford?

A. If my recollection serves me correctly, it was around June.

Q. After the formation the committee requested that the bondholders deposit their bonds with the committee; is that correct?

A. Well, that is correct, and it is not correct.

Q. Will you explain what happened?

A. The bondholders committee was formed for the purpose of investigating the default that had occurred, and the general problems of the owning corporation, which was the Whitney Estate Company, were discussed by the committee in conference with the representatives and counsel of the Whitney Estate Company. Several months elapsed between the time of the actual default and the call for bonds, due to the fact that the Whitney Estate Company was formulating a reorganization plan which they desired. It was after the formation and the provisions of this so-called reorganization plan of the Whitney Estate Company that an actual call for bonds was made, which was probably two or three months after the committee was formed.

Q. So, for the first two or three months there were no bonds held by the committee, at all?

A. Correct.

Q. And no certificates of deposit issued?

A. Correct.

Q. After that the call for bonds was made?

A. Right.

(Testimony of Lloyd D. Hanford.)

Q. It is a fact, is it not, Mr. Hanford, that up until November, 1933, the committee and the Whitney Estate Company were working on a so-called deferment plan? A. Correct.

Q. And, generally speaking, if it had gone into effect it would have provided that the principal of the bonds maturing in the next few years would be deferred until a later date, and the [6] interest would be deferred for a certain period?

A. Yes, sir.

Q. Did that deferment plan go into effect?

A. It did not.

Q. It was abandoned, was it?

A. It was abandoned.

Q. When, approximately?

A. I could not give you the exact date. I think there is a document in evidence that will show the approximate time it was abandoned.

Q. It was before the end of the year 1933?

A. Yes; as I recall it was.

Q. That it was abandoned? A. Yes.

Q. What was the reason for the abandonment of the deferment plan?

A. The committee could not secure sufficient deposits of bonds under the deferment plan.

Q. Did you, as a member of the committee, give consideration to the deferment plan, and did you consider it was an equitable plan from the point of view of the bondholders?

A. No, I did not.

Q. Why was that?

(Testimony of Lloyd D. Hanford.)

A. Because I felt that the bondholders would be deprived—the value of the property—

Q. I can't hear you.

A. It was my belief that the value of the securities under the bond issue was not equivalent to the total of the outstanding bonds.

Q. After the committee came to the conclusion that the deferment plan would have to be abandoned, what did it decide to do with the property, if anything?

A. It decided to attempt to acquire the property for the bondholders.

Q. Did the committee come to any conclusions as to the mechanics under which the property would be acquired by the bondholders, or for the bondholders?

A. Their general plan was to form a new corporation, in which the bondholders would become the owners of the property.

Q. You mean the owners of the stock of the new corporation? [7] A. Yes, sir.

Q. Did the committee come to any conclusion as to the mechanical method of acquiring legal title to the property?

A. The only conclusion they came to was to foreclose and acquire by exchange of bonds. I don't believe I quite understand what your question was.

Q. The legal title of the property was in the old corporation? A. Yes, sir.

Q. The committee—if I may lead the witness—came to a conclusion to get the property, the title

(Testimony of Lloyd D. Hanford.)

to the property, in the name of the new corporation, it would be necessary to have a trustee's sale; isn't that correct? A. Correct.

Q. This plan contemplated that to the extent of the bonds on deposit with the committee, the purchase price at the trustee's sale would be satisfied by an application of the deposited bonds?

A. That is correct.

Q. Which meant that cash would only be necessary to the extent to pay off the distributive share of the purchase price that would inure to non-depositing bondholders? A. That is correct.

Q. So the more bonds on deposit the less cash that would be required? A. Correct.

Q. In the early part of 1934, it is correct, is it not, Mr. Hanford, that the committee instructed the American Trust Company, which was the trustee under the bond indenture, to notice the property for sale? A. Yes, sir.

Q. And the sale was fixed for the 28th of February, 1934? A. Correct.

Q. Who were the attorneys for the committee?

A. Brobeck, Phleger & Harrison.

Q. And Mr. Meyer, of that firm, was the man who handled most of the [8] business?

A. Correct.

Q. Did the committee instruct Mr. Meyer to prepare articles of incorporation for the new corporation before the sale, or after the sale?

A. Prior to the sale of the property.

Q. Do you know whether, prior to February 28,

(Testimony of Lloyd D. Hanford.)

1934, Mr. Meyer submitted a draft of the articles of incorporation to the committee?

A. Yes, he did.

Q. Did the sale proceed on February 28, 1934?

A. Yes, it did.

Q. Prior to the date fixed for the sale, did the committee have a meeting at which Mr. Vincent Whitney was present? A. Yes.

Q. Who was Mr. Vincent Whitney?

A. Mr. Vincent Whitney was an officer of the Whitney Estate Company, who were the defaulting owners of the Whitney Building.

Q. He met with the committee in February, was it, Mr. Hanford, bearing in mind the sale was February 28th? A. Yes.

Q. It was February in which Mr. Whitney met with the committee?

A. I really can't recall the exact date that Mr. Whitney met with them.

Miss Phillips: If counsel has a memorandum showing the date I don't object to his leading the witness.

Mr. Ellis: I have certain memoranda, but I don't believe it is material.

Q. At any rate, between the date when the trustee issued the notice of sale and the date when the sale took place, Mr. Vincent Whitney attended a meeting of the committee? A. Correct.

Q. And he requested the committee, did he not, that the sale be postponed for a period?

A. That is correct.

(Testimony of Lloyd D. Hanford.)

Q. He had in mind some new plan that would permit the Whitney Estate Company to continue as the owner of the bonds? [9]

A. I don't know whether it was a new plan or the old plan, but he had some idea he could put over a type of deferment plan.

Q. What answer did the committee give to Mr. Whitney's request?

A. They would consent to a 30-day postponement, providing title to the property was given to the bondholders committee.

Q. You mean title, or possession?

A. Possession.

Q. Do you mean the bondholders committee wanted the title?

A. Well, I am not sure. In other words, title was to leave his hands.

Q. Possession?

A. Possession was to leave the hands of the Whitney Estate Company.

Q. What did Mr. Whitney have to say about that? A. They refused.

Mr. Ellis: I believe it will be stipulated, Miss Phillips, that on February 19, 1934, the Whitney Estate Company filed an action in the Superior Court of the City and County of San Francisco for the purpose of enjoining the sale?

Miss Phillips: Yes, so stipulated.

Mr. Ellis: And that an application for preliminary injunction was made to the Superior Court and that that application was denied by the Superior Court on February 26, 1934?

(Testimony of Lloyd D. Hanford.)

Miss Phillips: So stipulated.

Mr. Ellis: February 27th is the date. May it also be stipulated that on February 21, 1934, the American Trust Company, the Trustee under the bond indenture, filed an action against the Whitney Estate Company for specific performance of the covenants contained in the bond indenture under which possession of the property was to be turned over to the trustee in the event of default?

Miss Phillips: So stipulated. [10]

Mr. Ellis: Also providing for a receiver?

Miss Phillips: So stipulated.

Mr. Ellis: May it also be stipulated that at the same time that the court in the other action denied the application of the Whitney Estate Company for an injunction the court in the action filed by the American Trust Company granted an order appointing a receiver of the property?

Miss Phillips: So stipulated.

Mr. Ellis: Q. Mr. Hanford, you recall these facts, if not the dates, do you not? A. I do.

Q. As to which we just stipulated?

A. I do.

Q. Do you know a receiver went into possession of the property? A. Yes.

Q. Who was that receiver?

A. Vincent Finnegan, of the Buckby-Thorne Company.

Q. I believe you personally represented the committee at the Trustee's sale, did you not?

A. Yes.

(Testimony of Lloyd D. Hanford.)

Q. You made the bid for the property on behalf of the committee?

A. On behalf of the bondholders committee, yes.

Q. Do you recall what the bid price was?

A. The bid price was \$650,000.

Q. Mr. Hanford, I show you what purports to be a copy of a letter dated March 2, 1934, from Brobeck, Phleger & Harrison to Mr. Wellington Henderson, 340 Pine street, San Francisco, California, and ask you whether you have seen the original of this letter?

A. Yes; I have seen the original.

Mr. Ellis: Without reading the letter into evidence, your Honor, I might state it was a letter in which Brobeck, Phleger & Harrison, the attorneys for the bondholders committee, enclosed an original draft of articles of incorporation for the [11] new company and referred to the previous submission of a preliminary draft. I might suggest, your Honor, that I am offering a copy, I believe there is a stipulation—

Miss Phillips: Yes; there is no objection.

Mr. Ellis: Q. Mr. Hanford, the original of this letter was signed by Mr. Meyer, of Brobeck, Phleger & Harrison? A. Yes.

Mr. Ellis: I will offer this copy of the letter dated March 2, 1934, to Wellington Henderson, as Plaintiff's Exhibit No. 2.

(The document was marked "Plaintiff's Exhibit 2.")

(Testimony of Lloyd D. Hanford.)

PLAINTIFF'S EXHIBIT No. 2

(Copy)

March 2, 1934.

Mr. Wellington Henderson,
340 Pine Street,
San Francisco, California.

In re: One Thirty Three
Geary Corporation

Dear Mr. Henderson:

We enclose herewith original draft of Articles of Incorporation of the above named company. If the copy of this draft, which we previously sent you, has now been approved by all of the members of the Bondholders' Committee, the enclosed original should be executed and acknowledged by them and should then be returned to us for filing. If you cannot get all of the members of the Committee together at the same time to acknowledge their signatures, each should acknowledge his signature separately, having the Notary attach a certificate of acknowledgment of his individual signature.

Very truly yours,

BROBECK, PHLEGER &
HARRISON

By

TRM:MM

Enclosure.

[Endorsed]: Filed 7/10/42.

(Testimony of Lloyd D. Hanford.)

Mr. Ellis: Q. Mr. Henderson was the secretary of the committee, was he not?

A. Yes, he was.

Mr. Ellis: Will you stipulate, Miss Phillips, that the letter dated March 2, 1934, from Brobeck, Phleger & Harrison to Frank C. Jordan, Secretary of State, may be put in evidence?

Miss Phillips: Yes.

Mr. Ellis: I offer in evidence a copy of a letter dated March 2, 1934, to Hon. Frank C. Jordan, Secretary of State, Sacramento, California, from Brobeck, Phleger & Harrison, as Plaintiff's Exhibit No. 3.

(The document was marked "Plaintiff's Exhibit 3.")

PLAINTIFF'S EXHIBIT No. 3

(Copy)

March 2, 1934.

Honorable Frank C. Jordan,
Secretary of State,
Sacramento, California.

Dear Sir:

Please advise us whether the name "One Thirty Three Geary Corporation" is available for corporate use.

Very truly yours,
BROBECK, PHLEGER &
HARRISON

By

TRM:MM

[Endorsed]: Filed 7/10/42.

(Testimony of Lloyd D. Hanford.)

Mr. Ellis: I offer in evidence as Plaintiff's Exhibit 4 a copy of a letter dated March 3, 1934, from Frank C. Jordan, Secretary of State, to Brobeck, Phleger & Harrison. Any objection, Miss Phillips?

Miss Phillips: No objection.

(The document was marked "Plaintiff's Exhibit 4.")

PLAINTIFF'S EXHIBIT No. 4

(Copy)

State of California
Department of State
Sacramento

March 3, 1934.

Brobeck, Phleger & Harrison
Crocker Bldg.
San Francisco, Calif.

Attention: Theo. R. Meyer, Esq.

Gentlemen:

Replying to your inquiry concerning the availability of the name

"One Thirty Three Geary Corporation"

we advise that the same is not now under reservation, nor is it the name of any domestic or foreign corporation now in good standing in this State, nor does it closely resemble the name of such a corporation, or a name which is under reservation, nor would it be likely to mislead the public.

It will be understood that unless you obtain a certificate of reservation of said name, as provided

(Testimony of Lloyd D. Hanford.)

in section 291, Civil Code, you cannot be assured of being able to use it.

No particular form of application is prescribed, and accordingly, a certificate will be issued upon request therefor, irrespective of its form. Any such certificate has the effect of reserving the name therein set forth for a period of thirty (30) days.

Our fee for such certificate is \$2.00.

Very truly yours,

FRANK C. JORDAN,

Secretary of State

By A. A. BREWER

[Endorsed]: Filed 7/10/42.

Mr. Ellis: Q. Did the Whitney Estate Company dismiss its action as soon as the sale took place? A. No, it did not.

Q. It went ahead with that action?

A. Yes, it did. [12]

Q. I believe depositions were taken in March at the sale. A. Correct.

Q. Was the corporation which you testify the committee considered forming actually formed after the sale? A. No.

Q. Why wasn't it formed, if you know?

A. Well, firstly, the trustee was in possession, at least the receiver was operating the property due to the action that had been commenced by the

(Testimony of Lloyd D. Hanford.)

Whitney Estate Company, and the bondholders protective committee required some time for the mechanics of the preparation of a corporation to be formed sometime after the bondholders committee were actually in possession and operating the property.

Q. So that there were two reasons, then, why the corporation was not immediately formed, one was because the receiver and not the committee was in possession? A. Correct.

Q. Also title was being attacked?

A. Correct.

Q. Also, it took a little time to get the corporation functioning mechanically? A. Yes, sir.

Q. Sometime after the sale do you recall that negotiations were entered into between the committee and the attorney for the Whitney Estate Company with a view toward disposing of the litigation? A. Yes.

Q. I show you, Mr. Hanford, what purports to be a mimeographed copy of minutes of meeting of the bondholders protective committee of Whitney Estate Company, held on May 15, 1934, and ask you whether that is a facsimile of your signature.

A. Yes, it is, and a facsimile of the actual minutes.

Q. You have read these minutes since the date of the meeting? A. Yes.

Q. You acted as secretary of the committee at that meeting?

A. I was acting secretary at that meeting. [13]

(Testimony of Lloyd D. Hanford.)

Q. At the date of that meeting, and the minutes contain a true and correct transcript of what took place? A. Yes.

Mr. Ellis: I offer in evidence as plaintiff's exhibit next in order a mimeographed copy of the minutes of meeting of bondholders protective committee of the Whitney Estate Company held on May 15, 1934.

(The document was marked "Plaintiff's Exhibit 5.")

PLAINTIFF'S EXHIBIT No. 5

Minutes of the Meeting of the
Bondholders Protective Committee
of the Whitney Estate Company.

The regular meeting of the Bondholders Committee of The Whitney Estate Company was held at the main office of the American Trust Company, 464 California Street, San Francisco, California.

Time: 2:30 P. M. May 15th, 1934.

Present: Gerald Kennedy, R. M. Underhill, F. W. Wentworth and Lloyd D. Hirschfeld.

Absent: J. R. Kruse.

Others Present: Mr. Theodore Meyer as Counsel for the Committee and Mr. Sims of the Trust Dept. of the American Trust Co. were also present.

Mr. Wellington Henderson, Secretary, was absent and Mr. Lloyd D. Hirschfeld acted as Secretary for the Committee.

The meeting was called to order by Mr. Kennedy

(Testimony of Lloyd D. Hanford.)

as Chairman. Matter of the settlement of the pending suits between the Whitney Estate Company and the Bondholders Committee and others was discussed. It was moved by Mr. Wentworth, seconded by Mr. Kennedy with no opposing votes after general discussion with Mr. Meyer as Counsel for the Committee and Mr. Sims on behalf of the Trust Dept. of the American Trust Company that the following settlement should be made:

The Committee to pay to the Whitney Estate Company the sum of \$7500.00 in cash. Agree to withdraw all pending suits, which have been filed on its behalf against the Whitney Estate Company and agree to waive any right to any share of a deficiency judgment which may be brought by the trustees on behalf of the non-depositing bondholders, and the Committee will not pay any costs or counsel fees in connection with the filing or proceeding toward the trial of that suit. Committee will waive any rights to any notes or accounts receivable from those who are no longer tenants in the Whitney Building.

The Whitney Estate Company assigns to the Committee all notes and accounts receivable of tenants now in the Whitney Building in the total aggregate amount of approximately \$20,000.00. They are also to execute a bill of sale to the Committee covering all furniture in and about the Whitney Building including fittings and fixtures in the Wallach's store. Whitney Estate Company is to assign to the Committee, all fire insurance policies now in

(Testimony of Lloyd D. Hanford.)

force, supposedly uncanceled, covering the Whitney Building. The Whitney Estate Co. to retain for their own purposes any liability or compensation insurance policies, which they had prior to the trustee's sale. The Whitney Estate Company will dismiss all suits against the Trustee, the Committee, as a committee or as individuals or as representatives of various sundry interests and will agree to commence no further legal action, which in any way, may involve the Bondholders Committee or the new corporation to be formed. The Whitney Estate Company is to give to the Bondholders Committee a quitclaim deed to the premises known as The Whitney Building. The Whitney Estate Company is to make full settlement with the firm of Baldwin & Howell and any co-brokers in reference to any real estate commissions which may be due. In the like manner, they are to make proper settlements with any trade creditors which may in any way be deemed to involve the Committee and Owners of the herein mentioned property.

Mr. Lloyd D. Hirschfeld was authorized by the Committee to submit the herein proposal to the firm of Rogers, Clark and O'Brien, as the attorneys for the Whitney Estate Company for the approval or rejection by the Whitney Estate Company.

The Committee instructed Mr. Meyer as counsel for the Committee to immediately proceed with the formation of a new corporation in full accordance with the original draft, with the exception that the Board of Directors shall be the Bondholders Com-

(Testimony of Lloyd D. Hanford.)

mittee as now constituted and shall be elected for a period of two years. Mr. Meyer was also requested to formulate a letter to the depositing bondholders outlining completely the new plan of reorganization to include notification that the new company, for the purpose of avoiding litigation and securing clear title to the property and dismissing all pending suits in which the depositing bondholders might have any liability was to give an indemnity to The Whitney Estate Company against any deficiency judgment which may be secured and collected by the non-depositing bondholders. Further reciting that if the deficiency suit were brought by the non-depositing bondholders, all costs relative to that suit would have to be paid by the said non-depositing bondholders and the Committee believing that any judgment against The Whitney Estate Company by way of a deficiency would be worthless, have agreed to not only waive any interest to the said deficiency but have also agreed not to pay any costs, counsel fees or other expenses in connection with the said possible deficiency suit or the filing of that suit.

The meeting was adjourned at 3:45 P. M.

Minutes prepared and recorded by

LLOYD D. HIRSCHFELD

Acting Secretary.

LDH:ID

[Endorsed]: Filed 7/10/42.

(Testimony of Lloyd D. Hanford.)

Mr. Ellis: Q. The minutes, Mr. Hanford, point out that you were authorized to submit a proposal to the attorney for the Whitney Estate Company for the termination of the action? A. Yes.

Q. Will you explain how it was you were authorized to submit a proposal?

A. What you are asking me is how I happened to be the one that was authorized?

Q. Yes.

A. Well, the committee of bondholders met and I was the one that was really familiar with real estate and real estate values, and various matters pertaining to real estate, so I think it was their belief I was the best able to handle it.

Q. Had you had any negotiations with the attorney for the Whitney Estate Company before the date of that meeting relative to a settlement of the action? A. Yes, I had.

Q. You had had a sort of tentative agreement with the attorneys? A. Yes.

Q. You did submit the proposal that is referred to in these minutes to the attorneys for the Whitney Estate Company? A. Yes.

Q. And was that verbal or in writing?

A. It was verbal.

Q. It resulted in both actions being dismissed?

A. Yes.

Q. When I say "both actions," you understand I refer to the action that the Whitney Estate Com-

(Testimony of Lloyd D. Hanford.)

pany brought, and the action that the American Trust Company brought? A. That is correct.

[14]

Q. At the time the litigation was settled, was the receiver discharged? A. Yes.

Q. And possession of the property was turned over to the committee?

A. To the bondholders.

Q. Also the Whitney Estate Company quit-claimed the property to the committee?

A. Yes.

Q. After the receiver went out of possession who managed the property?

A. I was appointed manager on behalf of the bondholders protective committee.

Q. After the quitclaim deed was executed and delivered to the committee, and after the possession of the property was turned over to the committee, did the committee go ahead with this plan to form a new corporation?

A. Yes, it did. It instructed the attorneys to proceed with the mechanical end of it.

Q. Was the corporation immediately formed?

A. No, it was not immediately formed.

Q. What was the reason for the delay?

A. Purely mechanical, I believe.

Q. As a matter of fact, you recall things going along during the summer of 1934?

A. Yes. There were, I believe, two or three members of the bondholders committee away on their vacations, and it was rather difficult to get

(Testimony of Lloyd D. Hanford.)

signatures to necessary papers; that is what I referred to by mechanical difficulties.

Mr. Ellis: Will you stipulate, Miss Phillips, that the articles of incorporation of 133 Geary Corporation were filed in the office of the Secretary of State of California on September 4, 1934?

Miss Phillips: So stipulated.

Mr. Ellis: And that a certified copy of articles was filed in the office of the County Clerk of the City and County of [15] San Francisco on September 5, 1934?

Miss Phillips: So stipulated.

Mr. Ellis: Q. The 133 Geary Corporation was the corporation, Mr. Hanford, that the committee had instructed its attorneys to form?

A. That is correct.

Mr. Ellis: Will you stipulate, Miss Phillips, that the application of 133 Geary Corporation filed with the Commissioner of Corporations for a permit to issue stock was filed on October 8, 1934?

Miss Phillips: So stipulated.

Mr. Ellis: Miss Phillips, I am going to offer in evidence, a copy of the original application. I made a copy from the office copy of Brobeck, Phleger & Harrison. Have you a copy?

Miss Phillips: I believe I have a photostatic copy.

Mr. Ellis: May it be stipulated that this application may be filed with the omission of two exhibits, one of the exhibits is a printed copy of the

(Testimony of Lloyd D. Hanford.)

bondholders deposit agreement, which is already in evidence, and the other exhibit which is being omitted is a list of bondholders which is labelled "Confidential"?

Miss Phillips: I will stipulate that it may go in evidence as Exhibit 6, I think the number is, with the omission of the two exhibits to which counsel has referred.

(The document referred to was marked "Plaintiff's Exhibit 6.")

PLAINTIFF'S EXHIBIT No. 6

Before the Department of Investment
Division of Corporations
of the
State of California.

No.

In the Matter of the Application of

ONE THIRTY THREE
GEARY CORPORATION,

for a Permit Authorizing it to Issue Securities.

APPLICATION

The application of One Thirty Three Geary Corporation respectfully shows:

1. Applicant is a California corporation, incorporated September 4, 1934.
2. Applicant's post office address is Room 609, 133 Geary Street, San Francisco, California.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

3. The names of applicant's permanent officers and directors are as follows:

President: Robert M. Underhill

Vice President: A. D. King

Vice President: Lloyd D. Hirschfeld

Secretary: Wellington Henderson

Treasurer: Gerald D. Kennedy

Assistant Secretary: Irma L. Dito

Assistant Treasurer: F. W. Wentworth

General Manager: Lloyd D. Hirschfeld

Directors: Lloyd D. Hirschfeld, Gerald D. Kennedy, F. W. Wentworth, R. M. Underhill, A. D. King.

4. Applicant was incorporated for the purpose, among others, of acquiring the Whitney Building, an eight story store and office building located at 133 Geary Street, San Francisco, California, and all other property owned and held by Lloyd D. Hirschfeld, Gerald D. Kennedy, F. W. Wentworth, R. M. Underhill and A. D. King, as Committee under The Whitney Estate Company Bondholders' Deposit Agreement, subject to all obligations and liabilities of said Committee, all of which are to be assumed by applicant concurrently with said conveyance and transfer.

5. Applicant has an authorized capital consisting of twelve thousand (12,000) shares, without nominal or par value. Applicant proposes to issue eleven thousand one hundred thirty (11,130) shares of its said stock to said Committee, in considera-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

tion of the conveyance and transfer to applicant of all assets and property held by said Committee, including said Whitney Building, subject to all obligations and liabilities of said Committee. Said Committee proposes, after receiving said stock, to distribute the same pro rata among the bondholders who have deposited bonds with said Committee pursuant to the provisions of said Bondholders' Deposit Agreement.

6. Attached hereto as exhibits are the following:

Exhibit "A"—Copy of applicant's Articles of Incorporation.

Exhibit "B"—Copy of applicant's By-Laws.

Exhibit "C"—Copy of applicant's proposed form of stock certificate.

Exhibit "D"—Copy of resolution of applicant's Board of Directors authorizing the filing of this application and the issue of said stock.

Exhibit "E"—Statement of the assets and liabilities of said Bondholders' Committee as of August 31, 1934.

Exhibit "F"—Copy of the Bondholders' Deposit Agreement under which said Committee is acting.

Exhibit "G"—Lists of names and addresses of depositing and non-depositing bondholders, showing face value of bonds deposited or held by each. It is requested that these lists be kept confidential. Applicant cannot vouch for the absolute accuracy of the list of non-depositing bondholders, but said

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

list is based upon the most recent and reliable information available to applicant.

Wherefore, applicant prays that a hearing be held on notice to all interested parties pursuant to the provisions of Sections 14 and 15 of rules of the Division of Corporation governing reorganizations, effective August 1, 1934, and that thereafter a permit be issued authorizing applicant to issue eleven thousand one hundred thirty (11,130) shares of its stock, without nominal or par value, to Lloyd D. Hirschfeld, Gerald D. Kennedy, F. W. Wentworth, R. M. Underhill and A. D. King, as Committee under The Whitney Estate Company Bondholders' Deposit Agreement in consideration of the conveyance and transfer to applicant of all assets and property held by said Committee, including said Whitney Building, subject to all obligations and liabilities of said Committee, all of which are to be assumed by applicant concurrently with said conveyance and transfer.

Respectfully submitted,

ONE THIRTY THREE

GEARY CORPORATION

By ROBERT M. UNDERHILL

President

By WELLINGTON HENDERSON

Secretary

BROBECK, PHLEGER &

HARRISON

Attorneys for Applicant

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

State of California,

City and County of San Francisco—ss.

Wellington Henderson, being first duly sworn, deposes and says:

That he is an officer, to wit: the Secretary, of One Thirty Three Geary Corporation, a corporation, the applicant named in the foregoing application, and as such is authorized to verify the said application; that he has read the said application and knows the contents thereof, and that the same is true.

WELLINGTON HENDERSON

Subscribed and sworn to before me this 1st day of October, 1934.

(Seal)

EUGENE P. JONES

Notary Public. In and for the City and County of San Francisco, State of California.

EXHIBIT "A"

Articles of Incorporation

of

One Thirty Three Geary Corporation

Know All Men by These Presents:

That we, the undersigned, have this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California;

And We Do Hereby Certify:

First: That the name of said corporation is One Thirty Three Geary Corporation.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

Second: That the purposes for which it is formed are:

1. To acquire, hold, own, operate, manage, lease, sell and/or otherwise dispose of an office and store building or buildings and to do any and all things incidental thereto.

2. To buy, lease, or otherwise acquire, own or hold and to sell, rent, mortgage, or otherwise dispose of, both real and personal property, and to buy, rent or construct and maintain, buildings, machinery, or other equipment on such real property, and to sell or encumber the same.

3. To acquire, hold or sell, assign, lease, grant licenses in respect of, or otherwise dispose of, letters patent of the United States, or any foreign countries, patents, patent rights, licenses, privileges, inventions, copyrights, improvements and processes, trademarks and trade names, labels and brands, franchises, concessions, and any and all kinds and character of interest therein.

4. To buy, sell, manufacture, import, export, handle, prepare for market and deal in, merchandise, materials, goods, commodities and supplies of all kinds.

5. To acquire and undertake the whole or any part of the business, property and liabilities of any person or company carrying on any business which said corporation is authorized to carry on, or possessed of property suitable for the purposes of said corporation.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

6. To buy, or otherwise acquire, hold, own, sell or otherwise dispose of and generally deal in its own stocks and bonds and securities, and the stocks and bonds and securities of other corporations, and also any other securities, or evidences of indebtedness whatsoever or any interest therein, and while the owner of such shares, bonds, securities or evidences of indebtedness, to exercise all the rights, powers and privileges of ownership, including the right of voting thereon.

7. To aid in any manner any corporation of which any of the bonds, stock or other securities or evidences of indebtedness or stock are held by said corporation; and to do any acts or things designed to protect, preserve, improve or enhance the value of any such bonds or other securities, or evidences of indebtedness or stock.

8. To in any manner guarantee, underwrite, endorse or secure the notes, bonds, evidences or indebtedness or obligations of any person, firm or corporation, or of any part thereof or interest therein.

9. To borrow and loan money and to issue and receive promissory notes and bonds and other evidences of indebtedness and security therefor.

10. To mortgage, pledge or hypothecate all or any of the property of said corporation of every kind and character, including any franchises, and to make, execute and deliver mortgages, deeds of

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

trust and any other instruments which may be necessary or proper to secure its indebtedness.

11. To enter into, make, perform and carry out contracts of any kind for any lawful purpose with any person, firm, association or corporation.

12. To sell and issue shares of its capital stock upon such terms and conditions as to the Board of Directors of said corporation shall seem desirable and reasonable.

13. To have one or more offices to carry on all or any of its operations and business, and without restriction to purchase, or otherwise acquire, hold, own, mortgage, sell, convey, or otherwise dispose of, real and personal property of every class and description in any of the states, districts, territories or colonies of the United States and in any and all foreign countries.

14. And to do all or any of the above things in any part of the world, and as principals, agents, contractors, or otherwise, and by or through trustees, agents or otherwise, either alone or in conjunction with others; and to do all such other things as are incidental to, or conducive to the attainment of the above objects, or any of them and generally to carry on any other business which may seem to said corporation capable of being conveniently carried on in connection with the above, or calculated, either directly or indirectly, to enhance the value of or render profitable any of said corporation's properties or rights.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

The foregoing clauses shall be liberally construed both as objects and powers, and it is hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of said corporation to carry on any other business in connection with the foregoing.

Third: That the principal office for the transaction of the business of said corporation is to be located in the City and County of San Francisco, State of California.

Fourth: That said corporation is to be authorized to issue only one class of shares of stock, that the total number of shares which said corporation shall have authority to issue is twelve thousand (12,000) shares, and that all of such shares of stock are to be without par value.

Fifth: That the number of directors of said corporation shall be five (5), and that the names and addresses of the persons who are appointed to act as the first directors are as follows:

Name	Address
Lloyd D. Hirschfeld	San Francisco, California.
Gerald D. Kennedy	San Francisco, California.
F. W. Wentworth	Oakland, California.
R. M. Underhill	Berkeley, California.
A. D. King	San Francisco, California.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

In Witness Whereof, we have hereunto set our hands this 27th day of August, 1934.

LLOYD D. HIRSCHFELD

Lloyd D. Hirschfeld

GERALD D. KENNEDY

Gerald D. Kennedy

F. W. WENTWORTH

F. W. Wentworth

R. M. UNDERHILL

R. M. Underhill

A. D. KING

A. D. King

State of California,

City and County of San Francisco.—ss.

On this 29th day of August, 1934, before me, Eugene P. Jones, a Notary Public in and for the City and County of San Francisco, State of California, residing therein and duly commissioned and sworn, personally appeared Lloyd D. Hirschfeld, Gerald D. Kennedy, F. W. Wentworth, R. M. Underhill and A. D. King, known to me to be the persons whose names are subscribed to and who executed the within instrument, and they acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in the City and County of San Francisco, State of California, the day and year in this certificate first above written.

[Seal] EUGENE P. JONES

Notary Public in and for the City and County of San Francisco, State of California.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

EXHIBIT "B"

By-Laws

of

One Thirty Three Geary Corporation
a California corporation

Article I.

Corporate Powers

The corporate powers, business and property of the corporation shall be vested in, and exercised, conducted and controlled by a Board of five (5) Directors, who need not be stockholders of the corporation.

Article II.

Officers

The officers of the corporation shall consist of a President, a General Manager, one or more Vice-Presidents, a Secretary, an Assistant Secretary, a Treasurer, and an Assistant Treasurer. The Board of Directors may from time to time create such other offices as they may deem advisable, and elect the incumbents thereof. All of the officers of the corporation shall hold office at the pleasure of the Board of Directors.

Article III.

Powers and Duties of Directors.

The powers and duties of the Board of Directors are:

- (a) To appoint and remove at pleasure all of-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

fficers, agents and employees of the corporation, other than Directors, prescribe such duties for them as may not be inconsistent with law and these By-Laws, fix their compensation and require from them security for faithful service.

(b) To conduct, manage and control the affairs and business of the corporation, and to make such regulations therefor, not inconsistent with law and these By-Laws, as they may deem best.

(c) To fix, from time to time, the office of the corporation, to adopt, make and use a corporate seal, to prescribe the forms of the certificates of stock, and to alter the forms of such seal and certificates from time to time, as they may deem best.

(d) To issue or cause to be issued, at any time, and from time to time, certificates of stock.

(e) To sell and purchase, from time to time, shares of the capital stock of the corporation, upon such terms and conditions as to the Board of Directors shall seem desirable.

(f) To borrow money and incur indebtedness for the purposes of the corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes and other evidences of debt.

(g) To call in and demand from the stockholders the sums by them respectively subscribed for capital stock, in such payments and at such times as they may deem proper.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

(h) Generally to do and perform every act and thing whatsoever that may pertain to the office of the Directors, and to exercise all the powers and perform all the acts which the corporation can legally exercise and perform under its Articles of Incorporation.

(i) To amend, alter, repeal or adopt new By-Laws of the corporation by simple majority vote.

Article IV.

Vacancies in the Board of Directors.

Section 1. Whenever any vacancy occurs in the office of Director, such vacancy may be filled by an appointee selected by a majority of the remaining Directors, even though less than a quorum, and the person so appointed shall hold office until his successor is elected. In case of an increase in the number of Directors, the Board of Directors shall have power to fill the new positions, and their appointees shall hold office until the next election of Directors by the stockholders, or until their successors have been elected.

Section 2. A vacancy in the Board of Directors shall be deemed to have occurred whenever a Director resigns either by presenting his written resignation to the Board or presenting such resignation orally at any meeting of the Board, or whenever a Director dies, or by judgment of a competent court is declared incompetent or insane, or whenever

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

any vacancy is created in accordance with any law of the State of California.

Article V.

Election of Directors.

The directors shall be elected annually by the stockholders, at the annual meeting of the stockholders. Their term of office shall begin immediately after election and shall continue until the next annual meeting of the stockholders or until their successors are elected. At all elections, or votes had for any purpose, there must be a majority of the subscribed capital stock represented, either in person or by proxy in writing.

Article VI.

President

The powers and duties of the President are:

(a) To preside at all meetings of the Board of Directors and of the stockholders.

(b) To call special meetings of the stockholders and also of the Board of Directors, at such times as he may deem proper.

(c) To sign as President of the Corporation all deeds, conveyances, mortgages, leases, promissory notes, contracts, obligations, certificates and other papers and instruments in writing that may require such signature, unless the Board of Directors shall otherwise direct, and to perform such other duties as the Board of Directors may determine.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

Article VII.

General Manager.

The powers and duties of the General Manager are to manage and operate the Whitney Building, negotiate and execute leases, collect rentals, hire and fire employees, make contracts with respect to operations, incur bills, and make expenditures for the regular operations of said building, and to do any and all things reasonably incidental to the management of said building, subject to the direction of the Board of Directors.

Article VIII.

Vice-Presidents.

The Vice-Presidents shall, in the event of the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors shall from time to time prescribe.

Article IX.

Secretary.

The powers and duties of the Secretary are:

(a) To keep a full and complete record of the proceedings of the Board of Directors and of the meetings of the stockholders.

(b) To keep the seal, books and papers of the corporation, and to affix the seal to all instruments executed by the President, or by direction of the Board of Directors, which may reasonably require it.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

(c) To sign, in conjunction with the President, or any Vice-Presidents, all certificates of stock, checks, drafts, promissory notes and other documents unless the Board of Directors shall otherwise direct.

(d) To receive any moneys belonging to or paid in to the corporation, and to receipt for the same, and to deposit so much thereof as may not be needed for current expenses or uses, with such depositary as the Board of Directors may designate.

(e) To make service and publication of all notices that may be necessary or proper, and without command or direction from anyone. In case of the absence, inability, refusal or neglect of the Secretary to make service or publication of any notice, then such notice may be signed, served and published by the President or any Vice-President, or by any person thereunto authorized by any of them, or by the Board of Directors.

(f) To supervise the keeping of the accounts and of the books of the corporation.

(g) To transfer upon the stock books of the corporation any and all shares of stock.

(h) Generally to do and perform all such duties as pertain to his office and as may be required by the Board of Directors, or by the President.

Article X.

Treasurer

The Treasurer shall perform such duties as may

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

be prescribed by the Board of Directors or the President.

Article XI.

Assistant Secretary.

The Assistant Secretary shall, in the event of the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary, and shall perform such other duties as the Board of Directors shall from time to time prescribe.

Article XII.

Assistant Treasurer.

The Assistant Treasurer shall, in the event of the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer, and shall perform such other duties as the Board of Directors shall from time to time prescribe.

Article XIII.

Stockholders' Meetings.

Section 1. There shall be a regular annual meeting of the stockholders of the corporation on the first Tuesday in March in each and every year, beginning with the year 1935, at 2:30 P.M. of said day, at the office of the corporation; provided, that should said meeting day fall upon a legal holiday, said meeting of the stockholders shall be held on the next day thereafter which is not a legal holiday, at the same hour and place. At said regular meeting, Directors of the corporation shall be elected to serve

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

for the ensuing year, and until their successors are elected. Notice of the annual meeting of stockholders, and of the election of Directors thereat, shall be given by mailing notice thereof at least five days prior to the date of meeting, addressed to each of the stockholders of the corporation at his place of business or residence as the same appears on the books of the corporation, or, in case no business or residence address of a stockholder appears on the books of the corporation, then directed to any address appearing on the books for such stockholder. No other or further notice shall be required.

Section 2. Special meetings of the stockholders may be called and held at any time by order of the President or any Vice-President of the corporation. Notice of a special meeting of the stockholders shall be given by mailing notice thereof at least one day prior to the date of the meeting, addressed to each of the stockholders of the corporation as in the case of notice of the annual meeting. No other or further notice shall be required.

Section 3. At all meetings of the stockholders persons representing a majority of the subscribed capital stock, either in person or by proxy in writing, shall constitute a quorum; and at all such meetings each share of stock shall entitle the duly qualified holder thereof to one vote, except that in all elections of Directors, stockholders may cumulate their votes as provided by the laws of the State of Cali-

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

fornia. All proxies shall be in writing, subscribed by the party entitled to vote the number of shares represented thereby, or by his agent thereunto duly authorized in writing. No proxy shall be valid or confer any right or authority to vote or act thereunder, unless such proxy has been offered for filing to, and left with, the Secretary of the corporation prior to the meeting at which the same is to be used; provided, that in case any meeting of the stockholders whatsoever shall have been for any cause adjourned, such proxies shall be valid and may be used at such adjourned meeting which have been offered for filing to, and left with, the Secretary of the corporation prior to the date at which said adjournment meeting shall be in fact held. Any business which might be done at a regular meeting of the stockholders may be done at a special or at an adjourned meeting. If no quorum be present at any meeting whatsoever of the stockholders, such meeting may be adjourned by those present from day to day or from time to time, until a quorum is present, such adjournment and the reasons therefor being recorded in the record of proceedings of the stockholders.

Article XIV.

Directors' Meetings.

Section 1. All meetings of the Board of Directors shall be held at the office of the corporation or at such other place or places as may be designated

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

by resolution of said Board. Regular meetings of the Board of Directors shall be held at the office of the corporation on the first Tuesday of each month, at 2:30 P.M. without other or further notice from this By-Law; provided, however, that should said meeting day at any time fall upon a legal holiday, such meeting shall be held upon the next day thereafter which is not a legal holiday, at the same hour and place.

Section 2. Special meetings of the Board of Directors may be called at any time by order of the President or any Vice-President of the corporation. Notice of a special meeting of the Board of Directors shall be given each Director by leaving written or typewritten notice of the time and place thereof at his place of business or residence, at least one day prior to such meeting, or by depositing the same, with the postage thereon prepaid, in the United States mail at the principal place of business of the corporation, addressed to him at his place of business or residence, as the same appears on the books of the corporation, or, in case neither his business nor residence address appears on the books, then directed to any address appearing on the books for him, any such mailing to be at least one day before the day fixed for holding said meeting. The leaving or mailing of notice as aforesaid shall be due, legal and personal notice to such Director. No further or other notice shall be required. Any business which may be done at

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

a regular meeting of the Board of Directors may be done at a special or an adjourned meeting of the Board.

Section 3. The Board of Directors elected at any annual meeting of the stockholders shall meet immediately after the adjournment of such stockholders' meeting, and organize by the election of officers. No notice of such meeting need be given.

Article XV.

Amendments.

The power to amend, alter or repeal the By-Laws of the corporation and to adopt new By-Laws is hereby delegated to the Board of Directors of the corporation.

Article XVI.

Annual Reports Dispensed With.

The annual reports to shareholders, provided for by Section 358 of the California Civil Code as amended in 1931, are hereby dispensed with.

Know All Men by These Presents:

That we, the undersigned, being all of the Directors of One Thirty Three Geary Corporation, a corporation organized and existing under the laws of the State of California, hereby consent to and approve the foregoing Code of By-Laws, and do hereby adopt the same as the By-Laws of said corporation.

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

Dated: September 18th, 1934.

LLOYD D. HIRSCHFELD
GERALD D. KENNEDY
A. D. KING
ROBERT M. UNDERHILL

.....

Know All Men by These Presents:

That I, the undersigned, the Secretary of One Thirty Three Geary Corporation, a corporation organized and existing under the laws of the State of California, do hereby certify that the foregoing Code of By-Laws was duly and regularly adopted as the By-Laws of said corporation on the 18th day of September, 1934, by the Directors of said corporation, and that the same do now constitute the By-Laws of said corporation.

WELLINGTON HENDERSON
Secretary.

EXHIBIT "C"

Number	Shares
.....

One Thirty Three Geary Corporation
Incorporated Under the Laws of the
State of California,
September 4, 1934.

Capital Stock: 12,000 Shares
No Par Value.

This Certifies That
is the owner of

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

Shares of the Capital Stock of One Thirty Three Geary Corporation, transferable only on the books of this Corporation in person or by Attorney upon surrender of this Certificate property endorsed.

In Witness Whereof, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this day of A. D. 19.....

.....

President.

.....

Secretary.

(On Reverse Side)

For Value Received, hereby sell, assign and transfer unto Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint to transfer the said stock on the books of the within named corporation with full power of substitution in the premises.

Dated:, 19.....

.....

In Presence of

.....

Notice: The signature of this assignment must correspond with the name as written upon the face

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)
of the Certificate, in every particular, without alteration or enlargement, or any change whatever.

EXHIBIT "D"

Resolved, that this corporation, One Thirty Three Geary Corporation, issue eleven thousand one hundred thirty (11,130) shares of its stock, without par value, to Lloyd D. Hirschfeld, Gerald D. Kennedy, F. W. Wentworth, R. M. Underhill and A. D. King, as Committee under The Whitney Estate Company Bondholders' Deposit Agreement, in consideration of the conveyance and transfer to this corporation of all assets and property of every kind and nature whatsoever held by said Committee, including the Whitney Building, 133 Geary Street, San Francisco, California, subject to all obligations and liabilities of said Committee, all of which shall be assumed by this Corporation concurrently with said conveyance and transfer; and, be it

Further Resolved, that the President or Vice-President and the Secretary or Assistant Secretary of this corporation, be and they are hereby authorized and empowered, for and on behalf of this corporation and as its corporate act and deed, to execute and cause to be filed an application to the Department of Investment, Division of Corporation of the State of California, for a permit authorizing the issue of shares of stock of this corporation as

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

aforesaid, and to execute any and all instruments and to do and perform any and all other acts and things deemed by them necessary or desirable to effecte the issue of said stock and to carry out the purposes of this resolution; and, be it

Further Resolved, that the Board of Directors of this corporation does hereby determine the fair value to this corporation of said consideration to be received for the issue of said shares, to be the sum of \$667,800.

EXHIBIT "E"

THE WHITNEY ESTATE COMPANY BONDHOLDERS PROTECTIVE COMMITTEE BALANCE SHEET AS OF AUGUST 31, 1934

ASSETS

Cash in Banks	\$ 13,046.63
Notes and Accounts Receivable	9,505.27
Notes Receivable (for rents prior to foreclosure)	\$6,441.43
Accounts Receivable—Current	1,097.17
Due from Depository—a/c Bonds de- posited under agreement	1,966.67
	<hr/>
Total Current Assets	\$ 22,551.90
Land and Building—133 Geary Street	667,800.00
Foreclosure Expense	4,863.71
Unexpired Insurance	4,482.88
	<hr/>
	\$609,698.49
	<hr/> <hr/>

LIABILITIES

Accounts Payable—Current	\$ 3,405.23
Mortgage Note Payable	47,000.00
	<hr/>
Total Liabilities	\$ 50,405.23

(Testimony of Lloyd D. Hanford.)

Plaintiff's Exhibit No. 6—(Continued)

Net Worth: Represented by Certificates of Deposit
of \$1,115,000.00 par value old bonds.....\$649,293.26

\$699,698.49

[Endorsed]: Filed 7/10/42.

Mr. Ellis: I now offer in evidence a copy of an amendment to the application dated November 1, 1934, as Plaintiff's Exhibit 7.

(The document was marked "Plaintiff's Exhibit 7.")

PLAINTIFF'S EXHIBIT No. 7

(Stamped) Division of Corporations Received
Nov 1 1934 San Francisco Office

Before the Department of
Investment
Division of Corporations
of the
State of California

In the Matter of the Application of
ONE THIRTY THREE GEARY
CORPORATION,
for a Permit Authorizing it to Issue Securities.

Amendment to Application

This Amendment to the application of One Thirty Three Geary Corporation respectfully shows:

(Testimony of Lloyd D. Hanford.)

1. Applicant has heretofore filed with the Division of Corporations an application for a permit to issue eleven thousand one hundred thirty (11,130) shares of its stock to the Bondholders Committee under The Whitney Estate Company Bondholders Deposit Agreement. Said application and all of the exhibits thereto are hereby referred to and incorporated herein by this reference.

2. Since the filing of said application, the Bondholders Committee therein referred to has been requested to accept two additional bonds of the par value of One thousand Dollars (\$1,000) each for deposit, and has expressed its willingness to do so. In order that there may be issued to the Committee a sufficient number of applicant's shares to enable it to distribute shares of applicant's stock to the holders of said two bonds on the same basis on which such shares will be distributed to other depositing bondholders, it will be necessary for applicant to issue eleven thousand one hundred fifty (11,150) shares of its stock to the Committee in lieu of eleven thousand one hundred thirty (11,130) shares, as prayed for in said application.

3. Attached hereto and marked Exhibit "A" is a copy of a resolution of applicant's Board of Directors authorizing the filing of this amendment to application.

Wherefore, applicant prays that the prayer of said application be amended so as to request that a permit be issued authorizing applicant to issue eleven thousand one hundred fifty (11,150) shares

(Testimony of Lloyd D. Hanford.)

of its stock to the Bondholders Committee therein referred to, upon the terms and conditions therein set forth.

Respectfully submitted,

ONE THIRTY THREE GEARY
CORPORATION

(Signed) By LLOYD D. HIRSCHFELD

Vice-President

(Signed) By IRMA L. DITO

Assistant Secretary

(Signed) BROBECK PHLEGAR & HAR-
RISON

Attorneys for Applicant.

State of California,

City and County of San Francisco—ss.

Lloyd D. Hirschfeld, being first duly sworn, deposes and says:

That he is an officer, to wit, the Vice-President, of One Thirty Three Geary Corporation, a corporation, the applicant named in the foregoing amendment to application, and as such is authorized to verify the said application; that he has read the same application and knows the contents thereof, and that the same is true.

(Signed) LLOYD D. HIRSCHFELD

Subscribed and sworn to before me this 1st day of November, 1934.

[Seal] EUGENE P. JONES (Signed)

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed 7/10/42.

(Testimony of Lloyd D. Hanford.)

Mr. Ellis: Q. Mr. Hanford, the original application called for the issuance of 11,130 shares of stock of the new corporation. [16] The amended application called for the issuance of 11,150 shares of stock. Will you explain the reason for the increase?

A. Yes. There was one owner of two bonds who said that they felt they had been slighted, they never received any money, and they stated they were not dissenting bondholders, but assenting bondholders, and they felt they should have the privilege of being members of the new corporation, which we agreed and consented to.

Mr. Ellis: I made a copy of the permit which I intended to put in evidence and I left it in my office. Do you have a copy?

Miss Phillips: I may have.

Mr. Ellis: So I can put it in evidence. Will it be stipulated that a copy of the permit issued by the Corporation Commissioner may be deemed in evidence as Plaintiff's Exhibit next in order, and we will bring it out sometime during the afternoon?

Miss Phillips: Yes; that is all right.

(The document was marked "Plaintiff's Exhibit 8.")

(Testimony of Lloyd D. Hanford.)

PLAINTIFF'S EXHIBIT No. 8

Before the
Department of Investment
Division of Corporations
of the
State of California

PERMIT

In the matter of the application of
ONE THIRTY THREE GEARY
CORPORATION

for a permit authorizing it to sell an issue its
securities.

File No. 52337SF
Receipt No. SF-5935

This Permit Does Not Constitute a Recommendation or Endorsement of the Securities Permitted to Be Issued, But Is Permissive Only.

The applicant filed its application for the issue and sale of securities as hereinafter set forth on the 8th day of October, 1934. A hearing was held on the 1st day of November, 1934, upon the fairness of the terms and conditions of such issue and sale, at which hearing all persons to whom it is proposed to issue said securities had the right to appear, and thereafter, on the 2nd day of November, 1934, the Commissioner of Corporations made and filed his findings of fact and conclusions which are incorporated herein by this reference.

(Testimony of Lloyd D. Hanford.)

One Thirty Three Geary Corporation is hereby authorized:

1. To sell and issue to the bondholders committee and/or to the depositing bondholders referred to in said application on aggregate of not to exceed 11,150 shares of its capital stock in exchange for the property described in said application, subject only to the indebtedness or encumbrance therein described.

This permit is issued upon the following condition:

(a) That unless sooner revoked, suspended or extended by alteration or amendment, upon such terms and conditions as the Commissioner may deem proper, all authority to sell securities under issuance clause 1 of this permit shall terminate and expire on the 2nd day of May, 1935. All other issuance clauses and/or conditions of this permit shall remain in full force and effect until revoked, suspended, altered or amended by appropriate order of the Commissioner.

Dated: San Francisco, California,
November 2, 1934.

[Seal] EDWIN M. DAUGHERTY
Commissioner of Corporations
By IVAN T. CRASE
Assistant Commissioner

AM:NB

[Endorsed]: Filed 7/10/42.

(Testimony of Lloyd D. Hanford.)

Mr. Ellis: May it be stipulated, Miss Phillips, that on November 1, 1934, a hearing was held by the Corporation Commissioner of the State of California, upon the fairness of the terms and conditions upon which the stock of 133 Geary Corporation was being issued?

Miss Phillips: Yes.

Mr. Ellis: Will it be further stipulated that the permit was issued on November 2nd, 1943?

Miss Phillips: So stipulated.

Mr. Ellis: Q. Now, the permit, Mr. Hanford, authorized the issuance of 11,150 shares of the stock of the new corporation. What did that represent, so far as deposit of bonds were concerned? [17]

A. It represents ten shares of stock for every \$1000 par value of bonds.

Q. Or one share for every \$100.

A. Correct.

Q. When you say a bond, you mean a deposited bond? A. That's right.

Q. Other than these two bonds that you have referred to which necessitated the amendment of the application were any bonds accepted by the committee for deposit after the date of the trustee's sale?

A. There were none tendered and none accepted.

Q. Do you know the date, Mr. Hanford, when the new corporation issued its stock pursuant to the permit?

A. November 30, 1934.

Q. How was that stock issued?

A. The original certificate for 11,150 shares of

(Testimony of Lloyd D. Hanford.)

stock was issued to the bondholders protective committee of the Whitney Estate Company.

Q. Then what did the committee do with the stock?

A. The committee then transferred the stock in the proportion of one share per \$100 par value of bonds owned by the depositing bondholders.

Q. Was the property acquired by the new corporation *submit* to any liability?

A. Well, may I explain my recollection of the financial status? I think there was to be a mortgage on the property for some amount in the neighborhood of sixty to seventy-five thousand dollars.

Mr. Ellis: May I lead the witness, Miss Phillips?

Miss Phillips: Yes.

Mr. Ellis: Q. It is a fact, isn't it, Mr. Hanford, that the property was acquired subject to certain liabilities which were referred to in an exhibit attached to the application for a permit?

A. Yes.

Q. Those liabilities consisted of operating expenses which had [18] been incurred during the period of the receivership and its subsequent operation during your tenure as manager? A. Yes.

Q. And also a \$47,000 indebtedness secured by a mortgage? A. Yes.

Q. That \$47,000 represented, did it not, a residue of the monies that had to be borrowed by the committee to pay off non-depositing bondholders?

A. That money was used to pay off the non-depositing bondholders.

(Testimony of Lloyd D. Hanford.)

Q. The money was originally borrowed from the American Trust Company by the committee?

A. I believe it was the American Trust Company.

Q. Subsequently, the American Trust Company's indebtedness was paid off with funds borrowed from the Crocker Bank? A. Correct.

Q. And the mortgage was taken by the Crocker bank?

A. I think it was either a mortgage or deed of trust.

Q. One or the other. The specific assets that were turned over to the new corporation were the Whitney Building and the land on which it was situated, and certain cash that had been derived from operations?

A. Yes, plus some personal property that was usable for the operation of the Whitney Building.

Q. It was an office building, was it not?

A. Yes, sir.

Q. And furniture mostly belonged to the tenants?

A. Well, there was some office furniture, and filing cabinets and things.

Mr. Ellis: Will it be stipulated, Miss Phillips, that at the date of the trustee's sale, February 28, 1934, the fair market value of the Whitney Building and the land upon which it was situated was less than \$900,000?

Miss Phillips: Yes. [19]

Mr. Ellis: Q. Mr. Hanford, you have been

(Testimony of Lloyd D. Hanford.)

thoroughly familiar with the Whitney Building in this locality ever since the formation of the committee. A. Yes, I have.

Q. Were you familiar with it before the formation of the committee? A. Yes, I was.

Q. You were the manager of the property from the date of the discharge of the receiver until after the new corporation took over? A. Yes.

Q. You remained as manager of the property after the new corporation took over? A. Yes.

Q. And from your knowledge of the building, itself, and your knowledge of real estate value which you have gained as a real estate broker, can you state whether there was any moment between *between* the date of the default and the date when the new corporation took the property over that the property was of a greater market value than \$900,000?

A. I would say that between the time of the default and the time of the formation of the new company—is that it?

Q. Yes.

A. That it was never worth in excess of \$900,000 at that time.

Q. Through your participation as a member of the committee you became pretty well familiar with the financial affairs of the Whitney Estate Company? A. Yes.

Q. Do you know whether between the date of the default and the date of the trustee's sale the Whitney Estate Company had any assets of any substan-

(Testimony of Lloyd D. Hanford.)

tial value outside of the Whitney Building and the land upon which it was situated?

A. We made an investigation of that very point and determined to the satisfaction of all members of the committee that there was no financial reserve there, at all. [20]

Q. In other words, you do know that from April 15, 1933, to and including, we will say, the date when the new corporation took over the property, you do know that the aggregate value of all the assets of Whitney Estate Company were less than the principal amount of the outstanding bonds?

A. Yes; we were reasonably well satisfied of that condition.

Q. You have in your hand, I believe, Mr. Hanford, the ledger sheets of Santa Inez Company showing the acquisition of Whitney Estate Company bonds? A. Yes.

Q. Do you keep the books of the Santa Inez Company?

A. Yes, I do. There is an auditor, but I keep all records of the Santa Inez Company.

Q. Referring to the ledger sheets which you have, can you state the aggregate principal amount of bonds of Whitney Estate Company owned by Santa Inez Company on February 28, 1934?

A. \$136,00 par value.

Q. All of those bonds were deposited bonds?

A. On February 28, 1934, yes, they were all deposited bonds.

(Testimony of Lloyd D. Hanford.)

Q. The Santa Inez Company actually held, physically, certificates of deposit? A. Yes.

Q. Representing those bonds?

A. We had been buying them continuously over that period and we either bought certificates of deposit or actual bonds which we then deposited.

Q. Can you state from the ledger sheet the aggregate cost of those bonds to the Santa Inez Company?

A. According to this ledger sheet it was \$59,401.28.

Q. My record shows \$59,421.28.

A. There was \$20 paid on April 7th, which was a purchase commission on account of bonds purchased up to that time, but that was not paid until April 7th of 1934, that \$20. [21]

Q. Did it relate to a transaction that was before—

A. Yes, that related to one of these purchases that was before, because no bonds were bought after February 2nd, until May, 1934.

Q. So is it correct, Mr. Hanford, that the total cost to Santa Inez Company of the \$136,000 principal amount of Whitney Estate Company bonds to which you have just testified was \$59,421.28?

A. Yes, that's right.

Q. Is it a fact that on December 10, 1934, Santa Inez Company exchanged its certificates of deposit representing the \$136,000 principal amount of Whitney Estate Company bonds for 1360 shares of the capital stock of 133 Geary Corporation?

A. That's right.

(Testimony of Lloyd D. Hanford.)

Q. Did Santa Inez Company receive any other consideration in exchange for those certificates of deposit? A. No.

Cross-Examination

Miss Phillips: Q. Mr. Hanford, I take it that your agreement with the Whitney Estate Company called for the litigation to be dismissed and for the bondholders not to take a deficiency judgment against the Whitney Estate Company; is that right?

A. I don't recall the matter of the deficiency, because my big concern as a member of the bondholders committee was to clear the title of that property.

Q. Isn't it a fact no judgment was taken against the Whitney Estate Company.

A. No, it was not.

Mr. Ellis: Miss Phillips, if you are endeavoring to bring that matter out, the amount of that lien, I offered evidence that indicates that the agreement was that no deficiency judgment should be taken. I will stipulate to that, if you like.

Miss Phillips: Yes.

Q. Did you say the Whitney Estate Company had no property other than this building?

A. We were told they owned a ranch some- [22] where in California that was also heavily mortgaged, and at that time we were also advised that the value of the equity of that ranch was very questionable, and the possibility of realizing anything on that ranch was extremely doubtful, considering the expense that might be involved in attempting to pro-

(Testimony of Lloyd D. Hanford.)

ceed with the deficiency. That was the reason we dropped the idea of taking a deficiency.

Q. In other words, regardless of the property which the Whitney Estate Company had, your committee decided it was not going to try to get a deficiency?

A. Well, we decided it wasn't—

Q. Worth while?

A. Wasn't worth while.

Q. The reason I asked that question is I have the Whitney Estate Company's tax return for 1935, and I am just considering what income they reported the following year. I am wondering how far the committee went. I don't know that it is of any importance. As a matter of fact, as long as counsel has agreed it is not a reorganization he is relying on, I wonder if counsel will agree that the Whitney Estate Company actually continued in business thereafter and it held property and reported income and so on? Here is their return for 1935. They lost money in 1935, but they took in, according to this return, \$21,000.

Mr. Ellis: I will stipulate.

Miss Phillips: They actually did continue in business?

Mr. Ellis: Yes.

Miss Phillips: I notice they had sheep that they were shearing and oranges they were selling. How much cash had to be paid to the dissenting bondholders, Mr. Hanford?

A. I don't quite recall that. We had in excess

(Testimony of Lloyd D. Hanford.)

of 94 per cent, I believe it was, of all the bondholders depositing. There was slightly around 6 per cent of dissenting bondholders. [23]

Q. So when the title to the property was actually cleared on the 133 Geary Corporation, that is the new corporation, you had just the mortgage on the building and a few debts to take care of which had been incurred during the period of receivership?

A. Correct.

Q. The dissenting bondholders were few enough that the mortgage was of no consequence to a building of that size? A. That's right.

Miss Phillips: I think that is all I have to ask.

Redirect Examination

Mr. Ellis: Q. Mr. Hanford, just to clear this point up that Miss Phillips brought out, the committee determined not to proceed against the Whitney Estate Company on a deficiency judgment, not just out of the goodness of its heart, but because of advice that nothing could be gained by that; is that correct? A. Well, that is correct.

Q. This mortgage or deed of trust that Crocker Bank had was subsequently paid off? A. Yes.

Q. During the period in which you were manager of the building at 133 Geary, the new corporation?

A. Well, I believe some of it was paid off later, but it was eventually paid off during the operation of that property, or by the 133 Geary Corporation.

Mr. Ellis: That is all.

Miss Phillips: That is all.

Mr. Ellis: Miss Phillips, there were certain formal allegations at the end of our complaint, and I thought I might make a statement regarding them. I am the vice-president of Santa Inez Company, and I know these facts, and instead of testifying may I make the statement that I know of my own [24] knowledge that no assignment or transfer of the claim which is the subject matter of this action has itself been made by plaintiff, and that plaintiff is the sole owner of such claim, and I may further say there is no just credit or offset against the claim which is known to me or to the officers, any of the officers of Santa Inez Company. I assume you have a photostatic copy of the tax return you referred to?

Miss Phillips: Yes, I have.

Mr. Ellis: Both the original and the amended return?

Miss Phillips: I think so, for the year 1934, do you mean?

Mr. Ellis: Yes. I offer in evidence as Plaintiff's Exhibit next in order and as a single exhibit the original and amended return for the year 1934, filed by plaintiff with the Collector of Internal Revenue, and may the record show that these were produced from the files of the defendant?

(The documents were marked Plaintiff's Exhibit 9.)

PLAINTIFF'S EXHIBIT No. 9

United States [Cut] of America
Treasury Department *Original = 172*
Washington *Amended = 173*

June 9, 1941

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed are true copies of Corporation Income and Excess-Profits Tax Return for 1934, (with statements and schedules attached) filed by Santa Inez Company, San Francisco, California; "Amended Corporation Income and Excess-Profits Tax Return for 1934, (with schedule attached) filed by Santa Inez Company, San Francisco, California, on file in this Department.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary of the Treasury:

[Seal]

F. A. BIRGFELD,

F. A. Birgfeld,

Chief Clerk, Treasury Department.

(illegible)

HSF Wmb WMBaur SSF JPW H

Plaintiff's Exhibit No. 9—(Continued)

Computation Proved [Stamp]: Field

[In pencil]: RWR 35

Form 1094 Must Be Filed With This Return

Page 1 of Return

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN

Form 1094 Filed with return

For Calendar Year 1934 or Fiscal Year

Treasury Department began 1934, and ended....., 1935

File Code 1255

Print Plainly Corporation's Name and Business Address

Serial Number 400488

SANTA INEZ COMPANY

District 1—Calif.
(Cashier's Stamp)

Closed

[Stamp]: Revenue Agent
in Charge Received May
24 1936 San Francisco

No Additional Tax

111 SUTTER STREET

Date of RAR.

(Street and number)

Auditor

SAN FRANCISCO CALIFORNIA

Div.....Sec....E....Unit....3

(Post Office and State)

Date

6 1938 San Francisco

It is Essential, Except Where Otherwise Provided in
the Instructions, That This Form be Completely
Filled in Irrespective of Any Statements, Schedules,
or Reports Submitted Herewith

[Stamp]: Received with
Remittance Mar. 13 1935

Reviewer

Date

Collector of Int. Rev.

[In pencil]: See adjust-
ments made on amended
return.

First Dist. Calif

Cash Check M.O.

return.

Date of Incorporation—March 2, 1932

Cert. of Ind.

See adjust.

Under the Laws of what State or County—California

First Payment

\$.....

Plaintiff's Exhibit No. 9--(Continued)

1934--(Continued)

Page 1 of Return--(Continued)

The Corporation's Books are in Care of Located at
 Kind of Business (in detail)--Investments. Is This a Consolidated Return of Railroad Corporations? No.
 (Also check industrial division on page 3)

If so, of How Many Corporations? If a Foreign Corporation, State Whether Resident or
 Nonresident; If Nonresident, State Amount of Income Excluded (Instruction 33) From
 Gross Income, \$ [In pencil]: 246.75 Is the Corporation a personal holding corporation
 within the meaning of Section 351 of the Revenue Act of 1934? Yes. (If so, an additional return on Form
 (Answer "Yes" or "No")

1120 H must be filed.) [Stamp]: Attached to 1935 Return [Marginal Note]: Attach Remittance Here

Item and
 Instruction No.

GROSS INCOME

1. Gross Sales (where inventories are
 an income-determining factor), \$; Allowances, \$; Net Sales \$
2. Less Cost of Goods Sold:
 - (a) Inventory at beginning of year \$
 - (b) Material or merchandise bought for manufacture or sale.....
 - (c) Miscellaneous costs (From Schedule A, Column 1):
 - (1) Salaries and wages, \$
 - (2) Other costs, \$

.....; Total

Plaintiff's Exhibit No. 9—(Continued)

Page 1 of Return—(Continued)

1934—(Continued)

Gross Income—(Continued)

Item and Instruction No.	\$
(d) Total of lines (a), (b), and (c)	\$.....
(e) Less inventory at end of year.....	.....
3. Gross Profit from Sales (Item 1 minus Item 2).....	\$.....
4. Gross Receipts (where Inventories are not an income- determining factor)	\$.....
5. Less cost of operations (From Schedule A, Column 2) :	
(a) Salaries and (b) Other	
wages, \$.....; costs, \$.....; Total	
6. Gross Profit where inventories are not an income-determining factor (Item 4 minus Item 5)	4,716.37
7. Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.....	
8. Rents	
9. Royalties	
10. Capital Gain or Loss (From Schedule B)	10,997.63
11. Interest on Liberty Bonds, etc., (From Schedule J).....	
12. Dividends on Stock of:	
(a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1934	

Plaintiff's Exhibit No. 9—(Continued)

1934—(Continued)

Gross Income—(Continued)

Page 1 of Return—(Continued)

Item and
Instruction No.

- (b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1934
- (c) Foreign Corporations
- 13. Other Income (State nature of Income) (Use separate schedule, if necessary)
- 14. Total Income in Items 3, and 6 to 13, inclusive.....

\$ 15,714.00

DEDUCTIONS

- 15. Compensation of Officers (From Schedule C)
- 16. Rent on Business Property
- 17. Repairs (from Schedule D) : (a) Salaries and Wages, \$..... ;
(b) Other Costs, \$..... ; Total
- 18. Interest
- 19. Taxes (From Schedule E)
- 20. Losses by Fire, Storm, etc. (From Schedule F).....
- 21. Bad Debts (From Schedule G)
- 22. Dividends (Item 12 (a) above)

1,090.71

238.44

Plaintiff's Exhibit No. 9—(Continued)

1934—(Continued)	Deductions—(Continued)	Page 1 of Return—(Continued)
Item and Instruction No.		
23. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (From Schedule I)		
24. Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submit schedule, see Instruction 24)		
25. Other Deductions Authorized by Law (Explain below, or on separate sheet)		3,500.00
(a) Salaries and wages. (Not included in Items 2, 5, 15, or 17 above).....		3,715.79
(b) Other Expenses		
26. Total Deductions in Items 15 to 25.....		8,544.94
27. Net Income (Item 14 minus Item 26).....		\$ 7,169.06

03

Plaintiff's Exhibit No. 9—(Continued)

1934—(Continued) COMPUTATION OF TAX Page 1 of Return—(Continued)

	Income Tax	Excess-Profits Tax
28. Net Income (Item 27, above).....	\$ 7,169.06	35. Net Income for Excess-profits Tax
29. Less Interest on Liberty Bonds, etc. (Item 11)	_____	Computation (Item 27, above)
		\$ 7,169.06
30. Balance subject to Income Tax (Item 28 minus Item 29)	\$ 7,169.06	36. Less: 12½% of \$120,999. value of capital stock as declared in your capital-stock tax return for year ended June 30, 1934
		15,124.88
31. Income Tax (13¾% of Item 30) (or 15¾% of Item 30, if this is a con- solidated return of railroad corpora- tions)	\$ 985.75	37. Amount Subject to Excess-profits Tax (Item 35 minus Item 36).....
		Nil
32. Less: Income Tax Paid at Source. (This credit can be allowed only to a nonresi- dent foreign corporation....\$.....)	_____	38. Excess-profits Tax (5% of Item 37)
		Nil

Note.—Separate computation of Excess-profits Tax must be made on Form 1120 by each member of an affiliated group of railroad corporations making a consolidated Income Tax return.

34. Balance of Income Tax (Item 31 minus Items 32 and 33).....	\$ 985.75
---	-----------

03
04

Plaintiff's Exhibit No. 9—(Continued)

Page 2 of Return Schedule K—BALANCE SHEETS (see Instruction 44)

Items	Beginning of Taxable Year Amount	End of Taxable Year Amount	Total
ASSETS			
1. Cash		\$ 4,697.46	
2. Notes receivable			2,500.00
3. Accounts receivable	\$		
(a) Less reserve for bad debts.....			
	6,000.00		
4. Inventories:			
(a) Raw materials	\$		
(b) Work in process			
(c) Finished goods			
(d) Supplies			
.....			
.....			
5. Investments (nontaxable):			
(a) Obligations of a State, Territory, or any political subdivision thereof, or District of Columbia, or United States possessions.....	\$ 75,599.92		\$ 164,793.77

Plaintiff's Exhibit No. 9—(Continued)

Page 2 of Return—(Cont'd)

Schedule K—Balance Sheets—(Continued)

Assets—(Continued)

Items	Beginning of Taxable Year Amount	End of Taxable Year Amount	Total
(b) Obligations of instrumentalities of the United States	178,888.19	122,731.25	287,525.02
(c) Obligations of the United States.....	254,488.11		
6. Other investments:			
(a) Stocks of domestic corporations.....	\$.....	\$.....	
(b) Bonds of domestic corporations.....	.....	.....
(c) Stocks and bonds of foreign corporations.....	.....	.....
(d) All other investments or loans.....	.....	.....
7. Deferred charges:			
(a) Prepaid insurance	\$.....	\$.....	
(b) Prepaid taxes .....	.....	.....
(c) All other .....	.....	.....
8. Capital assets:			
(a) Land	\$.....	\$.....	
(b) Buildings .....	.....	.....

Plaintiff's Exhibit No. 9—(Continued)
Schedule K—Balance Sheets—(Continued)

Page 2 of Return—(Cont'd)
Assets—(Continued)

Items	Beginning of Taxable Year Amount	End of Taxable Year Amount	Total
(c) Machinery and equipment.....
(d) Furniture and fixtures
(e) Delivery equipment
.....
.....
.....
.....
.....
(f) Less reserves for depreciation (except on land)
9. Patents
10. Good will
11. Other assets (describe fully) :
Deposit a/c purchase of securities.....	\$ 9,000.00	.....
.....
.....
.....
.....
.....
.....
.....
12. Total Assets
			\$303,722.48

Plaintiff's Exhibit No. 9—(Continued)
 Page 2 of Return—(Cont'd) Schedule K—Balance Sheets—(Continued)

Items	Beginning of Taxable Year Amount	End of Taxable Year Total
LIABILITIES		
13. Notes payable (less than one year).....	\$ 20,000.00	\$ 60,000.00
14. Accounts payable	44,199.45	45,985.75
15. Bonds and notes (not secured by mortgage).....	.....	[In pencil] 45,000.00
16. Mortgages (including bonds and notes so se- cured) .....	.....	.....
17. Accrued expenses:		
(a) Interest	\$.....	\$.....
(b) Taxes .....	.....	.....
(c) All other .....	.....	.....
18. Other liabilities (describe fully):		
.....	\$.....	\$.....
.....
19. Capital stock:		
(a) Preferred stock (less stock in treasury).....	\$.....	\$.....
(b) Common stock (less stock in treasury).....	100,000.00	100,000.00

Plaintiff's Exhibit No. 9—(Continued)

Schedule K—Balance Sheets—(Continued)

Page 2 of Return—(Cont'd)

Liabilities—(Continued)

Items	Beginning of Taxable Year Amount	End of Taxable Year Amount	Total
20. Surplus Paid In	\$100,000.00	\$100,000.00	
21. Undivided profits	4,339.89	2,263.27	97,736.73
22. Total Liabilities			\$303,722.48

Remarks.....

.....

.....

.....

.....

Plaintiff's Exhibit No. 9—(Continued)

SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS

OF CHANGES IN SURPLUS

Page 3 of Return

1. Net income from Item 27, page 1 of the return	\$ 7,169.06	
2. Nontaxable income:		
(a) Interest on obligations of a State, Territory, or any political subdivision thereof, or the District of Columbia, or United States possessions		(e) Other items of nontaxable income (to be detailed):
(b) Interest on obligations of the United States (except interest in excess of exemption as reported in Schedule J (e))		(1)
(c) Dividends deductible under Section 23 (p) of the Revenue Act of 1934		(2)
(d) Proceeds of life insurance policies paid upon the death of the insured		(3)
		3. Charges against reserve for bad debts, if Item 21, page 1 of return, is not an addition to a reserve
		4. Charges against reserves for contingencies, etc. (to be detailed):
		(a)
		(b)
		(c)
		5. Total of lines 1 to 4, inclusive.....\$.....
		6. Total from Line 14..... 985.75
		[In pencil]: 7169.06

Plaintiff's Exhibit No. 9—(Continued)

Schedule L—(Continued)

Page 3 of Return—(Cont'd)

7. Net profit or loss for year, as shown by books, before any adjustments are made therein (Line 5 minus Line 6) (if loss, indicate)	\$ 6,183.31
8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year	4,339.89
	[In pencil] : 4339.89
9. Other credits to surplus (to be detailed) :	
(a)	
(b)	
(c)	
10. Total of Lines 7 to 9, inclusive.....	\$10,523.20
	[In pencil] : 13,772.22
11. Total from Line 17.....	12,786.47
12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)	\$ 2,263.27
13. Unallowable deductions :	
(a) Donations, gratuities, and contributions	\$
(b) Income and profits taxes paid to the United States, and such taxes paid to its possessions or foreign countries if claimed as a credit in whole or in part in Item 33, page 1 of the return.....	.....
(c) Federal taxes paid on tax-free covenant bonds .....	.....
(d) Special improvement taxes tending to increase the value of the property assessed .....	.....

Plaintiff's Exhibit No. 9—(Continued)

Schedule L—(Continued)		Page 3 of Return—(Cont'd)
13. (Continued)	13. (i)—(Continued)	
(e) Furniture and fixtures, additions, or betterments treated as expenses on the books.....	(2).....	
(f) Replacements and renewals	(3).....	
(g) Insurance premiums paid on the life of any officer or employee where the corporation is directly or indirectly a beneficiary	(k) Other unallowable deductions (to be detailed):	
	(1) Federal tax on 1934 income	985.75
	(2).....	
	(3).....	
(h) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation.....	14. Total of Line 13	\$ 985.75
(i) Additions to reserve for bad debts which are not included in Item 21, page 1 of return.....	15. Dividends paid during the taxable year (state whether paid in cash, stock of the corporation, or other property):	
(j) Additions to reserves for contingencies, etc. (to be detailed):	(a) Date paid 12/26/34	
(1).....	Character Cash	\$12,000.00
	(b) Date paid.....	Character.....
	(c) Date paid.....	Character.....
	(d) Date paid.....	Character.....

Plaintiff's Exhibit No. 9—(Continued)

Schedule L—(Continued) Page 3 of Return—(Cont'd)

16. Other debts to surplus (to be detailed):	16. (Continued)	
(a) Federal Tax on 1933 Income....	(b).....	
[In pencil]: Arrow pointing from 13. (k) (1).	(c).....	
		\$12,786.47
	17. Total of Lines 15 and 16.....	

NET INCOME (OR DEFICIT) REPORTED IN RETURN FOR CALENDAR YEAR 1933 OR FISCAL YEAR 1934

1. Net Income\$ 5,719.76 (or deficit\$.....)

NATURE OF BUSINESS

2. Check the block to indicate the industrial division in which the corporation's main income producing business falls:

- | | | |
|---|---|--|
| () Agriculture and related industries, including fishing, forestry, ice - harvesting; leasing such properties. | Manufacturing | Manufacturing—(Cont'd) |
| () Mining and quarrying, including gas and oil wells; leasing such properties. | Food and kindred products: | () Mill products—bran, flour, feed. |
| | () Bakery and confectionery products. | () Packing-house products—meats, lard; slaughtering. |
| | () Canned products — fish, fruit, vegetables, poultry. | () Sugar — beet, cane, maple; molasses, sirups; refining. |

Plaintiff's Exhibit No. 9—(Continued)

Schedule L—Nature of Business—(Continued)

Page 3 of Return—Cont'd

Manufacturing—(Con.)

Manufacturing—(Con.)

Manufacturing—(Con.)

- () Other food products—butter substitutes, cereals, coffee, spices, dairy products; artificial ice, etc.
- () Beverages, soft drinks, mineral water.
- () Brewing and distilling—alcohol, liquors, beer, malt extract, wines.
- () Tobacco products.
- Textiles:
- () Cotton goods—dress goods, etc.; napping, dyeing.
- () Woolen and worsted goods — dress goods, etc.; wool pulling, scouring.
- () Silk and rayon goods—dress goods, thrown silk, etc.; spinning, warping.

- () Carpets, floor coverings, tapestries, linoleum.
- () Other textiles — cord, felt, fur, linen, artificial leather, surgical textiles, etc.
- () Clothing — custom - made, factory - made; underwear, millinery, etc.
- () Knit goods — sweaters, hosiery, etc.
- () Leather boots, shoes, slippers, etc.
- () Other leather products—saddlery, harness, trunks; finishing, tanning.
- () Rubber tires and tubes.
- () Other rubber goods—boots, shoes, hose, artificial rubber.

- () Bone, celluloid, and ivory products.
- () Sawmill and planing mill products.
- () Other wood products—carriages, wagons, furniture, baskets, etc.
- () Paper, pulp and products.
- () Printing, publishing, and allied industries.
- () Petroleum and other mineral oil refining and products.
- () Chemicals proper, acids, compounds, coal-tar products, etc.
- () Allied chemical substances, drugs, oils, soaps, etc.

Plaintiff's Exhibit No. 9—(Continued)

Schedule L—Nature of Business—(Continued) Page 3 of Return—Cont'd

Manufacturing—(Con.)	Manufacturing—(Con.)	Manufacturing—(Con.)
() Paints, pigments, varnishes, etc.	() Machinery — agricultural and equipment.	() Radios, complete or parts.
() Fertilizers.	() Machinery — electrical and equipment.	() Musical, professional, and scientific instruments; optical goods, small boats.
() Stone, clay, glass, and related products.	() Machinery — other, building, construction, gas and mining machinery and equipment.	() Airplanes, airships, seaplanes; parts.
Metal products and processes:	() H o u s e h o l d equipment—metal furniture, refrigerators, sewing machines, washing machines, etc.	() Construction — excavations, bridges buildings, railroads, ships; equipping and installing systems.
() Iron and steel—products of blast furnaces, rolling mills, foundries.	() Office equipment.	() Transportation — rail, water, aerial, motor, etc.; leasing such facilities.
() Locomotives and railroad equipment.	() Metal building material and equipment.	() Public utilities — electric light or power, gas (artificial or natural), pipe lines, telegraph, telephone, radio, water-works, heat supply, toll bridges, etc.; leasing such utilities.
() Motor vehicles, complete or parts.	() Hardware, tools, etc.	
() Machinery — factory, used in producing food, leather, metal, paper, printing, rubber, stone, clay, glass, textile and wood products.	() Precious metal products and processes.	
	() Other metals, products and processes.	

Plaintiff's Exhibit No. 9—(Continued)

Schedule L—Nature of Business—(Continued) Page 3 of Return—Cont'd

- | | | |
|--|--|---|
| <p>Manufacturing—(Cont'd)</p> <p>() Storage—cold storage, grain elevators, warehouses, safe-deposit vaults, etc.</p> <p>Trade:</p> <p>() Wholesale.</p> <p>() Retail.</p> <p>() Wholesale and retail.</p> <p>() Commission.</p> <p>() All other trade — repair service, garages for storage, film exchange, etc.</p> | <p>Miscellaneous Mfg.—(Cont'd)</p> <p>() Service—professional, business, amusement, domestic, and all other.</p> <p>Finance:</p> <p>() Banks—national, State, private, savings; joint - stock land banks.</p> <p>() Stock and bond brokers, investment bankers or brokers, investment trusts.</p> | <p>Manufacturing—(Cont'd)</p> <p>() Real estate, realty holding, real estate agents.</p> <p>() Insurance companies (not agents).</p> <p>(X) Other finance — loan companies, building and loan associations; note, mortgage or pawn brokers; stock syndicates, insurances agents</p> |
|--|--|---|

AFFILIATIONS WITH OTHER CORPORATIONS (See Instruction 39)

3. Is this a consolidated return?—No. If so, procure from the collector of Internal Revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return.

4. Was the income of this corporation included in a consolidated return for the prior year?—No. If so, give name of corporation which filed the consolidated return.

Predecessor Business

5. Did the corporation file a return under the

Plaintiff's Exhibit No. 9—(Continued)

Schedule L—Affiliations With Other Corporations—(Cont'd)

Page 3—(Cont'd)

same name for the preceding taxable year?—Yes.
 Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917?—No. If answer is "yes", give name and address of each predecessor business, and the date of the change in entity.

Upon such change were any asset values increased or decreased?
 If the answer is "yes", closing balance sheets of old business and opening balance sheets of new business must be furnished.

Basis of Return

6. Is this return made on the basis of cash receipts and disbursements?—Yes. If not, describe fully what other basis or method was used in computing net income.

Valuation of Inventories

7. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and the date inventory was last reconciled with stock.

Preparation of Return (See Instruction 51)

8. Did any person or persons advise the corporation in respect of any question or matter affecting any item or schedule of this return, or assist or advise the corporation in the preparation of this return, or actually prepare this return for the corporation?—Yes. If so, give the name and address of such person or persons and state the nature and extent of the assistance or advice received and the items and schedules in respect of which the assistance or advice was received; if this return was actually prepared by any person or persons other than the corporation, state the source of the

(Answer "yes" or "no")

Plaintiff's Exhibit No. 9—(Continued)

Schedule L—Preparation of Return—(Cont'd) Page 3 of Return—(Cont'd)

information reported in this return and the manner in which it was furnished to or obtained by such person or persons—Prepared from books after audit.

List of Attached Schedules

10. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return—Schedule B.

25.

Information Return

9. Did the corporation make a return of information on Forms 1096 and 1099 (see Instruction 57) for the calendar year 1934?—Yes.

(Answer "yes" or "no")

SCHEDULE A (See Instructions 2 and 5)

[Followed by ruled form not filled in]

Page 4 of Return

SCHEDULE B—CAPITAL GAINS AND LOSSES (See Instruction 10)

[Followed by ruled form not filled in]

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 15)

[Followed by ruled form not filled in]

SCHEDULE D—COST OF REPAIRS (See Instruction 17)

[Followed by ruled form not filled in]

Plaintiff's Exhibit No. 9—(Continued) Page 4—(Cont'd)

SCHEDULE E—TAXES PAID (See Instruction 19)

1. Items	2. Amount (Enter as Item 19)
State Francise Tax	\$ 114.90
Federal Capital Stock Tax	120.00
Federal Check Taxes	3.54
	<hr/>
	\$ 238.44

SCHEDULE F—EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC.

(See Instruction 20)

[Followed by ruled form not filled in]

SCHEDULE G—BAD DEBTS (See Instruction 21)

[Followed by ruled form not filled in]

SCHEDULE H—INCOME FROM DIVIDENDS (See Instruction 12)

[Followed by ruled form not filled in]

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 23)

[Followed by ruled form not filled in]

SCHEDULE J—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES
(See Instruction 11)

[Followed by ruled form not filled in]

AFFIDAVIT (See Instruction 50)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including its accompanying schedules and statements, if any) has been examined by him and is, to the best of his knowledge and belief, a true, correct, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

[Corporate Seal] JOHN C. ALTMAN

Sworn to and subscribed before me this 13th day of March, 1935.

(President ~~or other principal officer~~) (State Title)

[Notarial Seal] AGNES M. COLE,

(Signature of officer administering oath) (Title)

Notary Public, in and for the City and County of San Francisco, State of California.

(Treasurer, ~~Assistant Treasurer or Chief Accounting Officer~~) (State Title)

[Illegible]

Plaintiff's Exhibit No. 9—(Continued)

AFFIDAVIT (See Instruction 51)

Page 4—(Cont'd)

I/~~we~~ swear (or affirm) that I/~~we~~ prepared this return for the person named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax and/or excess-profits tax liability of the person for whom this return has been prepared of which I/~~we~~ have any knowledge.

Sworn to and subscribed before me this 13th
day of March, 1935.

[Notarial Seal] AGNES M. COLE

(Signature of officer administering oath) (Title)

Notary Public in and for the City and County of
San Francisco, State of California. My Com-
mission Expires October 18, 1938.

.....
(Signature of Person preparing the return)

B. H. HICKLIN

(Signature of Person preparing the return)

HICKLIN and REDMOND,
C.P.A.'S

(Name of firm or employer, if any)

SANTA INEZ COMPANY

111 Sutter Street, San Francisco, California

FORM 1120 CALENDAR YEAR 1934

Taxpayer is a personal holding company within the meaning of Section 351 of the Revenue Act of 1934, and is therefore required to execute and file Form 1120-H. Taxpayer is unable to file Form 1120-H for the reason that the Collector of Internal Revenue for the First District of California (being the district within which taxpayer has its place of business) has no Forms 1120-H available and taxpayer has been unable to ascertain from any source the nature of the information required to be furnished upon Form 1120-H. No surtax is payable by taxpayer under the provisions of Section 351 of the Revenue Act of 1934.

Plaintiff's Exhibit No. 9—(Continued)

Santa Inez Company—111 Sutter Street—San Francisco—California
Form 1120—Calendar Year 1934

SCHEDULE B—CAPITAL GAINS AND LOSSES

Bonds	Acq.	Received	Cost	Gain
12 M 165 Broadway, N. Y.	5½%	\$ 6,175.20	\$ 7,080.00	\$ 904.80
12.5 M Broadway & 20th Prop.	6	3,025.00	3,158.00	133.00
200 M L. A. Ambassador Hotel	6	65,607.50	53,366.54	12,240.96
24 M Sacramento Medico Dental Building	6½	10,299.47	10,990.00	690.53
1 M Seventh & Hill Bldg.	6½	1,000.00	515.00	485.00
		<u>\$86,107.17</u>	<u>\$75,109.54</u>	<u>\$10,997.63</u>

SCHEDULE 25—OTHER EXPENSES

Traveling	\$ 155.26	Trust Fees	420.61
Legal	2,876.20	Miscellaneous	113.72
Auditing	150.00		
			<u>\$3,715.79</u>

[Printer's Note: In the column headed "Gain" the figures \$904.80, 133.00 and 690.53 appear in bold face type.]

Plaintiff's Exhibit No. 9—(Continued)

Santa Inez Company

111 Sutter Street—San Francisco—California

Form 1120—Calendar Year 1934

STATEMENT REGARDING INVESTMENTS

Statement with respect to exchange of securities deemed to be a non-taxable exchange.

This corporation owned first mortgage bonds of the Whitney Estate Company and of the Sacramento Medico Dental Building Company during the year 1934. After acquisition of said bonds by this corporation the trustee of each property in due course sold the respective property at a foreclosure sale and each property was purchased by a Bondholders' Protective Committee.

As a result of the action of the Whitney Estate Company Bondholders' Committee this corporation received stock in a new corporation, 133 Geary Corporation, in the exact proportion that this corporation's bondholding was to the total bonds deposited with the Bondholders' Committee. Over 95% of the bonds of the Whitney Estate Company had been deposited and remained with the Bondholders' Protective Committee.

No gain or loss is included in this income tax return for the reason that this exchange of securities is believed to come within the provision of Section 112(g) of the Revenue Act of 1934.

The bonds of the Sacramento Medico Dental

Exhibit No. 9—(Continued)

Building Company owned by this corporation were dealt with in the same manner as above outlined except that during 1934 this corporation had not received the new securities proposed to be issued by a new corporation formed in 1934 for purpose of acquiring the properties of the old Sacramento Medico Dental Building Company. This delay was due to the preparation of an application preliminary to securing permission from the Corporation Commissioner of the State of California for the issuance of securities proposed under the new organization.

It is proposed to issue bonds and stocks of the new corporation to the bondholders represented by the Bondholders' Protective Committee in the exact proportion that said bondholders held bonds of the former corporation with the exception that 9½% of the bondholders of the former corporation who did not deposit their bonds with the Bondholders' Protective Committee shall not receive any securities of the new corporation.

Accordingly, it is believed that this transaction also comes within the reorganization provision of Section 112(g) of the Revenue Act of 1934 and that no gain or loss was realized from this exchange during 1934.

Plaintiff's Exhibit No. 9—(Continued)

[Stamped] : Computation proved AMENDED RETURN [In pencil] : 400488 Williams

Form 1094 Must Be Filed With This Return

CORPORATION INCOME AND EXCESS-PROFITS TAX RETURN

Form 1120

For Calendar Year 1934 or Fiscal Year

Page 1 of Return

begun....., 1934, and ended....., 1935.

Print Plainly Corporation's Name and Business Address

File Code 1255

(Auditor's Stamp)

SANTA INEZ COMPANY

Serial Number 400700

Audited

Int. to 12/31/36

111 SUTTER STREET

[Stamped] Jan.

Tax Liability

(Street and Number)

District 1-Calif.

Increased \$15323.01*

SAN FRANCISCO CALIFORNIA

(Cashier's Stamp)

Interest 1649.22*

(Post Office and State)

Received

Total \$16972.23*

It is Essential, Except Where Otherwise Provided

With Remittance

*[Circled in pencil]

in the Instructions, That This Form be Completely

Dec 31 1935

Filled in Irrespective of Any Statements, Schedules,

Return Audited by

or Reports Submitted Herewith.

Collector of Int. Rev.

C. M. Williams

Date of Incorporation—March 2, 1932.

First Dist. Calif.

Agent ~~or Auditor~~

Under the Laws of what State or County—California

Cash Check M.O.

Division

[Stamped on left hand margin] : R.A.R. Attech. to

Cert. of Ind.

Date Forwarded to

1935 Return.

Collector Jan. 15 1937

[Printed on left hand margin] : Attach Remittance

First Payment

Date of

Here.

\$13815.55

Assessment 1937 Jan.

Amended Return

Plaintiff's Exhibit No. 9—(Continued)

Corporation Income and Excess-Profits Tax Return—(Con'td) Page 1—(Cont'd)

The Corporation's Books are in Care of..... Located at

[In pencil] : J T A 4/8/37 E-3

Kind of Business (in detail) Investments. Is This a Consolidated Return of Railroad Corporations? No.
(Also check industrial division on Page 3)

If so, of How Many Corporations?..... If a Foreign Corporation, State Whether Resident or Non-resident If Nonresident, State Amount of Income Excluded (Instruction 33) From Gross Income?..... Is the Corporation a personal holding company within the meaning of Section 351 of the Revenue Act of 1934? Yes. (If so, an additional return on Form 1120 H must be filed.)

(Answer "yes" or "no")

See Original Return

[Pencilled across face of Gross Income] : J T A 3/19/37 E-3. [Stamp] : Illegible.

Item and
Instruction No.

GROSS INCOME

1. Gross Sales (where inventories are an income-determining factor), \$.....; Allowances, \$....., Net Sales \$.....
Less Returns and
2. Less Cost of Goods Sold:
 - (a) Inventory at beginning of year.....\$.....
 - (b) Material or merchandise bought for manufacture or sale.....
 - (c) Miscellaneous costs (From Schedule A, Column 1):
 - (1) Salaries and wages \$.....; costs, \$.....; Total
 - (2) Other

Item and
Instruction No.

Gross Income—(Continued)

(d) Total of lines (a), (b), and (c).....\$.....
 (e) Less Inventory at end of year.....\$.....

3.	Gross Profit from Sales (Item 1 minus Item 2).....	\$.....
4.	Gross Receipts (where Inventories are not an income-determining factor)	\$.....
5.	Less cost of operations (From Schedule A, Column 2):	
	(a) Salaries and wages, \$.....; costs, \$.....; Total.....	
	(b) Other.....	
6.	Gross Profit where Inventories are not an income-determining factor (Item 4 minus Item 5)	4,716.37
7.	Interest on Loans, Notes, Mortgages, Bonds, Bank Deposits, etc.....	
8.	Rents	
9.	Royalties	
10.	Capital Gain or Loss (From Schedule B).....	10,997.63
11.	Interest on Liberty Bonds, etc. (From Schedule J).....	
12.	Dividends on Stock of:	
	(a) Domestic Corporations subject to taxation under Title I of Revenue Act of 1934	
	(b) Domestic Corporations not subject to taxation under Title I of Revenue Act of 1934	

[Stamped] : 1613

Item and Instruction No.

Gross Income--(Continued)

- (c) Foreign Corporations
- 13. Other Income (State nature of income) (Use separate schedule, if necessary) Per schedule
- 14. Total Income in Items 3, and 6 to 13, inclusive.....

72,463.28

See page 2

\$ 88,177.28

DEDUCTIONS

[Stamped on face of Deductions]: Original Assessment Verified Tax \$985.75 Penalty.....
Interest..... Account #400488 - 1935 A J Pr W

- 15. Compensation of Officers (From Schedule C) \$.....
- 16. Rent on Business Property.....
- 17. Repairs (From Schedule D): (a) Salaries and Wages, \$.....; Total
- 18. Interest..... 1,090.71
- 19. Taxes (From Schedule E) 238.44
- 20. Losses by Fire, Storm, etc. (From Schedule F).....
- 21. Bad Debts (From Schedule G).....
- 22. Dividends (Item 12 (a) above)
- 23. Depreciation (resulting from exhaustion, wear and tear, or obsolescence) (From Schedule I)
- 24. Depletion of Mines, Oil and Gas Wells, Timber, etc. (Submit schedule, see Instruction 24)

75

76

Amended Return Plaintiff's Exhibit No. 9—(Continued) Page 1 Return—(Cont'd)

Item and Instruction No.	Deductions—(Continued)	
25. Other Deductions Authorized by Law (Explain below, or on separate sheet):		
(a) Salaries and wages. (Not included in Items 2, 5, 15, or 17 above).....		3,500.00
(b) Other Expenses		3,715.79
26. Total Deductions in Items 15 to 25.....		8,544.94
27. Net Income (Item 14 minus Item 26).....		<u>\$ 79,632.34</u>

COMPUTATION OF TAX

	Income Tax	Income Tax—(Continued)
28. Net income (Item 27, above).....	\$79,632.34	32. Less Income Tax Paid at Source. (This credit can be allowed only to a non-resident foreign corporation)
29. Less Interest on Liberty Bonds, etc. (Item 11)\$
30. Balance subject to Income Tax (Item 28 minus Item 29).....	\$79,632.34	33. Income Tax Paid to a Foreign Country or U. S. Possession by a Domestic Corporation
31. Income Tax (13 ³ / ₄ % of Item 30) (or 15 ³ / ₄ % of Item 30, if this is a consolidated return of railroad corporations) .....		.....
34. Balance of Income Tax (Item 31 minus Items 32 and 33)	\$10,949.45	\$10,949.45*

Plaintiff's Exhibit No. 9—(Continued)

Amended Return Computation of Tax—(Continued) Page 1 Return—(Cont'd)

Excess-Profits Tax Excess-Profits Tax—(Continued)

35. Net Income for Excess-profits Tax
 Computation (Item 27, above).....\$79,632.34

36. Less 12½% of \$120,999. value of
 capital stock as declared in your
 capital-stock tax return for year
 ended June 30, 1934 15,124.88

38. Excess-profits Tax (5% of Item
 36) 3,225.37*

[In pencil]: Int. paid 153.20*

Note—Separate computation of Excess-profits Tax must be made on Form 1120 by each member of an affiliated group of railroad corporations making a consolidated Income Tax return.

37. Amount subject to Excess-profits
 Tax (Item 35 minus Item 36).....\$64,597.46

[In pencil]: 10949.45

985.75 Aug Assmt

Tax 9963.70*

Int. 473.28* Int. @ 6% Pd.

* Figures circled in pencil.

Plaintiff's Exhibit No. 9—(Continued)

Amended Return

SCHEDULE K—BALANCE SHEETS (See Instruction 44)

Page 2 of Return

vs. Santa Inez Company

205

Items

ASSETS

	Beginning of Taxable Year Amount	End of Taxable Year Total
1. Cash		
2. Notes receivable	\$ 8,051.23	\$ 4,697.46
3. Accounts receivable	\$	2,500.00
(a) Less reserve for bad debts.....	6,000.00	
4. Inventories:		
(a) Raw materials	\$	
(b) Work in process		
(c) Finished goods		
(d) Supplies		
.....		
.....		
5. Investments (nontaxable):		
(a) Obligations of a State, Territory, or any political subdivision thereof, or District of Columbia, or United States possessions.....	\$	\$

Plaintiff's Exhibit No. 9—(Continued)

Page 2—(Cont'd)

Schedule K—Balance Sheets—(Continued)

Amended Return

Items	Beginning of Taxable Year Amount	End of Taxable Year Total
5. (Continued)		
(b) Obligations of instrumentalities of the United States		
(c) Obligations of the United States.....		
6. Other investments:		
(a) Stocks of domestic corporations.....	\$ 75,599.92	\$164,793.77
(b) Bonds of domestic corporations.....	178,888.19	195,194.53
(c) Stocks and bonds of foreign corporations.....		
(d) All other investments or loans.....	254,488.11	359,988.30
7. Deferred charges:		
(a) Prepaid insurance	\$.....	\$.....
(b) Prepaid taxes		
(c) All other		
8. Capital assets:		
(a) Land	\$.....	\$.....
(b) Buildings		

Plaintiff's Exhibit No. 9—(Continued)

Amended Return	Schedule K—Balance Sheets—(Continued)	Page 2—(Cont'd)
Items	Beginning of Taxable Year Amount	End of Taxable Year Amount
	Total	Total
(c) Machinery and equipment.....	.....	.....
(d) Furniture and fixtures .....	.....	.....
(e) Delivery equipment .....	.....	.....
.....
.....
.....	\$.....	\$.....
(f) Less reserves for depreciation (except on land) .....	.....	.....
.....
.....
9. Patents .....	.....	.....
10. Good will .....	.....	.....
11. Other assets (describe fully):		
Deposit a/e purchase of securities.....	\$.....	9,000.00
.....
.....
12. Total Assets	\$268,539.34	\$376,185.76

Plaintiff's Exhibit No. 9—(Continued)

Amended Return

Schedule K—Balance Sheets—(Continued)

Page 2—(Cont'd)

LIABILITIES

Items	Beginning of Taxable Year Amount	End of Taxable Year Amount
13. Notes payable (less than one year).....	\$ 20,000.00	\$ 60,000.00
14. Accounts payable	44,199.45	96,076.70
15. Bonds and notes (not secured by mortgage).....	.....	.....
16. Mortgages (including bonds and notes so se- cured) .....	.....	.....
17. Accrued expenses:		
(a) Interest	\$.....	\$.....
(b) Taxes .....	.....	.....
(c) All other .....	.....	.....
18. Other liabilities (describe fully):		
.....	\$.....	\$.....
.....
19. Capital stock:		
(a) Preferred stock (less stock in treasury).....	\$.....	\$.....
(b) Common stock (less stock in treasury).....	100,000.00	100,000.00

Plaintiff's Exhibit No. 9—(Continued)

Amended Return	Schedule K—Balance Sheets—(Continued)		Page 2—(Cont'd)
Items	Beginning of Taxable Year Amount	End of Taxable Year Total	Total
20. Surplus Paid In	\$100,000.00	\$100,000.00	
21. Undivided profits	4,339.89	104,339.89	120,109.06
22. Total Liabilities	\$268,539.34		\$376,185.76
Remarks.....			

SCHEDULE L—RECONCILIATION OF NET INCOME AND ANALYSIS
OF CHANGES IN SURPLUS

Page 3 of Return

1. Net income from Item 27, page 1 of the return\$79,632.34
2. (Continued)
 - (b) Interest on obligations of the United States (except interest in excess of exemption as reported in Schedule J (c)).....
 - (c) Dividends deductible under Section 23 (p) of the Revenue Act of 1934

Plaintiff's Exhibit No. 9—(Continued)

Amended Return

Schedule L—Reconciliation of Net Income—(Cont'd)

Page 3—(Cont'd)

2. (Continued)	
(d) Proceeds of life insurance policies paid upon the death of the insured	
(e) Other items of nontaxable income (to be detailed):	
(1)	
(2)	
(3)	
3. Charges against reserve for bad debts, if Item 21, page 1 of return, is not an addition to a reserve.....	
4. Charges against reserves for contingencies, etc. (to be detailed):	
(a)	
(b)	
(c)	
5. Total of lines 1 to 4, inclusive.....\$	
6. Total from Line 14.....	
7. Net profit or loss for year, as shown by books, before any adjustments are made therein (Line 5 minus Line 6 (if loss, indicate)	\$79,632.34
8. Surplus and undivided profits as shown by balance sheet at close of preceding taxable year	4,339.89
9. Other credits to surplus (to be detailed):	
(a)	
(b)	
(c)	
10. Total of Lines 7 to 9, inclusive.....	\$83,972.23
11. Total from Line 17	63,863.17
12. Surplus and undivided profits as shown by balance sheet at close of taxable year (Line 10 minus Line 11)	\$20,109.06

Plaintiff's Exhibit No. 9—(Continued)

Amended Return

Schedule L—Reconciliation of Net Income—(Cont'd)

Page 3—(Cont'd)

13. Unallowable deductions:

(a) Donations, gratuities, and contributions	\$.....	13. (g)—(Continued)
(b) Income and profits taxes paid to the United States, and such taxes paid to its possessions or foreign countries if claimed as a credit in whole or in part in Item 33, page 1 of the return....	.....	playee where the corporation is directly or indirectly a beneficiary
(c) Federal taxes paid on tax-free covenant bonds .....	.....	(h) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the interest upon which is wholly exempt from taxation.....
(d) Special improvement taxes tending to increase the value of the property assessed .....	.....	(i) Additions to reserve for bad debts which are not included in Item 21, page 1 of return.....
(e) Furniture and fixtures, additions, or betterments treated as expenses on the books.....	.....	(j) Additions to reserve for contingencies, etc. (to be detailed):
(f) Replacements and renewals .....	.....	(1).....
(g) Insurance premiums paid on the life of any officer or em-	.....	(2).....
		(3).....
		(k) Other unallowable deductions (to be detailed):
		(1).....

Plaintiff's Exhibit No. 9—(Continued)

Amended Return Schedule L—Reconciliation of Net Income—(Cont'd) Page 3—(Cont'd)

13. (k)—(Continued)	15. (Continued)
(2).....	(b) Date paid 12/26/34
(3).....	Character Credit..... 51,076.70
14. Total of Line 13.....\$.....	(c) Date paid..... Character.....
15. Dividends paid during the taxable	(d) Date paid..... Character.....
year (state whether paid in cash,	16. Other debts to surplus (to be de-
stock of the corporation, or other	tailed):
property):	(a) Federal Tax on 1933 Income.... 786.47
(a) Date paid 12/26/34	(b).....
Character Cash .....\$12,000.00	(c).....
NET INCOME (OR DEFICIT) REPORTED IN RETURN FOR CALENDAR YEAR	17. Total of Lines 15 and 16.....\$63,863.17
1933 OR FISCAL YEAR 1934	
1. Net income	\$5,719.76 (or deficit

NATURE OF BUSINESS

2. Check the block to indicate the industrial division in which the corporation's main income producing business falls:
 [Printer's Note: Listings under this head are identical with the listings as set out on pages 187-189 of this printed record, and are not duplicated here for that reason.]

Plaintiff's Exhibit No. 9—(Continued)

Amended Return

Schedule L—(Continued)

Page 3—(Cont'd)

AFFILIATIONS WITH OTHER CORPORATIONS (See Instruction 39)

3. Is this a consolidated return?—No. If so, procure from the collector of Internal Revenue for your district Form 851, Affiliations Schedule, which shall be filled in, sworn to, and filed as a part of this return.

4. Was the income of this corporation included in a consolidated return for the prior year?—No. If so, give name of corporation which filed the consolidated return.

Predecessor Business

5. Did the corporation file a return under the same name for the preceding taxable year?—Yes. Was the corporation in any way an outgrowth, result, continuation, or reorganization, of a business or businesses in existence during this or any prior year since December 31, 1917?—No. If answer is "yes", give name and address of each predecessor

business, and the date of the change in entity.

Upon such change were any asset values increased or decreased? If the answer is "yes", closing balance sheets of old business and opening balance sheets of new business must be furnished.

Basis of Return

6. Is this return made on the basis of cash receipts and disbursements?—Yes. If not, describe fully what other basis or method was used in computing net income.

Valuation of Inventories

7. State whether the inventories at the beginning and end of the taxable year were valued at cost, or cost or market, whichever is lower. If other basis was used, describe fully, state why used and

Plaintiff's Exhibit No. 9—(Continued)

Amended Return

Schedule L—(Continued)

Page 3—(Cont'd)

the date inventory was last reconciled with stock.

information reported in this return and the manner in which it was furnished to or obtained by such person or persons—Prepared from books after audit.

Preparation of Return (See Instruction 51)

8. Did any person or persons advise the corporation in respect of any question or matter affecting any item or schedule of this return, or assist or advise the corporation in the preparation of this return, or actually prepare this return for the corporation?—Yes. If so, give the name and address of such person or persons and state the nature and extent of the assistance or advice received and the items and schedules in respect of which the assistance or advice was received; if this return was actually prepared by any person or persons other than the corporation, state the source of the

Information Return

9. Did the corporation make a return of information on Forms 1096 and 1099 (see Instruction 57) for the calendar year 1934?—Yes.

(Answer "yes" or "no")

(Answer "yes" or "no")

List of Attached Schedules

10. Enter below a list of all schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the corporation should be placed on each separate schedule accompanying the return—Schedule 13.

Amended Return

• SCHEDULE A (See Instructions 2 and 5)

Page 4 of Return

[Followed by ruled form not filled in]

SCHEDULE B—CAPITAL GAINS AND LOSSES (See Instruction 10)

[Followed by ruled form not filled in]

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 15)

[Followed by ruled form not filled in]

SCHEDULE D—COST OF REPAIRS (See Instruction 17)

[Followed by ruled form not filled in]

SCHEDULE E—TAXES PAID (See Instruction 19)

1. Items	2. Amount (Enter as Item 19)
State Franchise Tax	\$ 114.90
Federal Capital Stock Tax.....	120.00
Federal Check Taxes	3.54
	<hr/>
	\$ 238.44

SCHEDULE F—EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC.

(See Instruction 20)

[Followed by ruled form not filled in]

Amended Return

Plaintiff's Exhibit No. 9—(Continued)

Page 4—(Cont'd)

SCHEDULE G—BAD DEBTS (See Instruction 21)

[Followed by ruled form not filled in]

SCHEDULE H—INCOME FROM DIVIDENDS (See Instruction 12)

[Followed by ruled form not filled in]

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION

(See Instruction 23)

[Followed by ruled form not filled in]

SCHEDULE J—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES

(See Instruction 11)

[Followed by ruled form not filled in]

AFFIDAVIT (See Instruction 50)

We, the undersigned, president (or vice president, or other principal officer) and treasurer (or assistant treasurer, or chief accounting officer) of the corporation for which this return is made, being severally duly sworn, each for himself deposes and says that this return (including its accompanying schedules and statements, if any) has been examined by him and is, to the best of his knowledge and belief, a true, cor-

Plaintiff's Exhibit No. 9—(Continued)

Amended Return

Affidavit—(Continued)

Page 4—(Cont'd)

rect, and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1934 and the Regulations issued thereunder.

Sworn to and subscribed before me this 28th day of December, 1935.

[Notarial Seal] LOUIS WIENER

(Signature of officer administering oath) (Title)

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires July 30th, 193

[Corporate Seal] JOHN C. ALTMAN

(President or other principal officer) (State Title)

ALLEN W. EDELMAN

(Treasurer, Assistant Treasurer, or chief accounting officer) (State Title)

Treasurer

AFFIDAVIT (See Instruction 51)

I/we swear (or affirm) that I/we prepared this return for the person named herein and that the return (including its accompanying schedules and statements, if any) is a true, correct, and complete statement of all the information respecting the income tax and/or excess-profits tax liability of the person for whom this return has been prepared of which I/we have any knowledge.

Sworn to and subscribed before me this 28th day of December, 1935.

[Notarial Seal] LOUIS WIENER

(Signature of officer administering oath) (Title)

Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires July 30th, 193

B. H. HICKLIN

(Signature of person preparing the return)

(Signature of person preparing the return)

(Name of firm, or employer, if any)

Plaintiff's Exhibit No. 9—(Continued)

SANTA INEZ COMPANY—111 SUTTER STREET—SAN FRANCISCO—CALIFORNIA

Form 1120—Calendar Year 1934—Amended

SCHEDULE 13—GAIN ON EXCHANGES OF PROPERTY

Bonds	Realized	Cost	Gain
Whitney Estate Company	\$104,328.95 (a)	\$59,421.25	\$44,907.70
Sacramento Medico Dental Bldg. Co.....	64,200.00 (b)	36,644.42	27,555.58
	<u>\$168,528.95</u>	<u>\$96,065.67</u>	<u>\$72,463.28</u>

(a) On February 27, 1934, taxpayer owned \$136,000.00 principal amount of first mortgage bonds of the Whitney Estate Company, deposited with a Bondholders Protective Committee. At a foreclosure sale on that date the Committee acquired, on behalf of all depositing bondholders, the property, which then had a fair market value of \$855,344.00, as determined by independent appraisal. A total of \$1,115,000.00 of bonds out of \$1,175,000.00 bonds outstanding were deposited with the Committee, therefore taxpayer's pro-rata share of value realized is 136/1115 of \$855,344.00, or \$104,328.95.

(b) On October 30, 1934, taxpayer owned \$85,600.00 principal amount of first mortgage bonds of the Sacramento Medico Dental Building, Inc. deposited with a Bondholders Protective Committee. At a foreclosure sale on that date the Committee acquired the property, which then had a fair market value of \$300,000.00, as determined by independent appraisal. A total of \$400,000.00 of bonds out of \$416,500.00 bonds outstanding participated in the acquisition of the property by the Committee, therefore this corporation realized its pro rata of the value of the property, 856/4000 of \$300,000.00 or \$64,200.00.

Mr. Ellis: That is the case, your Honor.

Miss Phillips: Your Honor, the question is one of law. There is no question of fact, no factual question involved in this case. It is a question of interpreting the statute on tax-free exchanges, so I am not offering any evidence. I would like to have the record show a motion for judgment for the defendant on all the issues involved. I assume your Honor may want a memorandum of authorities filed.

Mr. Ellis: We can either brief it or argue it.

(After discussion, it was agreed that the matter should be submitted on briefs.)

[Endorsed]: Filed July 12, 1943.

[Endorsed]: No. 10499. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Santa Inez Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed July 22, 1943.

PAUL P. O'BRIEN,

Clerk of United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 10499.

UNITED STATES OF AMERICA,

Appellant,

vs.

SANTA INEZ COMPANY, a corporation,

Appellee.

DESIGNATION OF POINTS TO BE RELIED
ON IN THE APPEAL OF THE ABOVE
ENTITLED CASE

The Appellant hereby designates the Points filed in the District Court and contained in the Record docketed in this Court as the Points designated and to be relied on in the appeal of the above entitled case.

FRANK J. HENNESSY,

United States Attorney

By W. E. LICKING,

Assistant United States At-
torney.

DESIGNATION FOR PRINTING RECORD
ON APPEAL

To the Clerk of the Circuit Court of Appeals for
the Ninth Circuit:

Appellant hereby designates all of the record on
appeal as the record to be printed.

FRANK J. HENNESSY,

United States Attorney

By W. E. LICKING,

Assistant United States At-
torney.

[Endorsed]: Filed Jul 22 1943. Paul P. O'Brien,
Clerk.

